



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, मंगलवार, 27 अक्तूबर, 2009/5 कार्तिक, 1931

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-2, the 12th October, 2009

Sharm (A)7-1/2005 (Award).—In exercise of the powers vested in him under section 17(1) of the industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of the following awards announced by the Presiding Officers Labour Court, Shimla in Rajpatra, H.P. :—

Sl. No.	Case No.	Title of the Case	Date of Award
1.	105/2007	S/Shri Ramesh Kumar Vs. M/S Echel Engineering Components Company Baddi.	01-08-2009

2.	11/2009	Ashwani Kumar Vs. M.D. M/S Solrex Pharmaceuticals Ltd., Baddi.	01-08-2009
3.	267/1998	Lakshmi Chand Vs. M/S Ballarpur Industries, Yamuna Nagar.	01-08-2009
4.	105/2004	Prem Kainthla Vs. BDO, Narkanda, Shimla.	19-08-2009
5.	169/2003	Raj Kumar Vs. MD, H.P. Agro Industrial Corporation & Ors.	01-08-2009
6.	239/1998	Virender Kaushal Vs. M/S Cosmo Ferrities Ltd. Jabli, Solan.	01-08-2009
7.	6/2000	Rajesh Kumar Vs. M/S Jai Mata glass, Ltd. Barotiwala, Solan.	01-08-2009
8.	48/2005	Bhagat Ram & Ors. Vs. XEN, HPSEB, Rajgarh, Sirmour.	03-08-2009
9.	24/2005	Deepa Ram Vs. XEN, HPPWD, Division, Shillai Sirmour.	04-08-2009
10.	26/2003	Rakesh Abrol Vs. MD, Agro Industrial Packaging India Ltd. Shimla-2.	04-08-2009
11.	111/2006	Netar Singh Vs. Commissioner, M.C., Shimla.	04-08-2009
12.	91/2005	Gopal Singh Vs. XEN, IPH, Division No. III, Solan.	06-08-2009
13.	143/2006	Hem Raj Vs. XEN, HPPWD, Division No. II, Shimla.	11-08-2009
14.	22/2006	Jarnail Singh Vs. M.D. HRTC, Shimla & Ors.	11-08-2009
15.	48/2006	Leela Dutt Vs. XEN, HPPWD, Division-II, Shimla	12-08-2009
16.	51/2005	Inder Singh Vs. XEN, HPSEB, Rajgarh, Sirmour.	17-08-2009
17.	57/2003	Nathu Ram Vs. XEN, HPSEB, Parwanoo, Solan.	17-08-2009
18.	370/2002	Kamal Kumar Vs. MD, H.P. State Co-operative Agr. & Rural Dev. Bank Shimla & Ors.	18-08-2009
19.	62/2003	Shashi Bhushan & Ors. Vs. G.M. Sidhartha Textile Ltd. Solan.	18-08-2009
20.	228/2003	Naresh Kumar Vs. R.M., HRTC, Shimla	19-08-2009
21.	356/2003	Bhoop Singh Vs. R.M., HRTC, Rural Unit Dhalli, Shimla.	19-08-2009
22.	26/2009	Sardar Sohan Singh Vs. Cine Sound Service, Shimla.	20-08-2009
23.	67/2007	Vipin Kumar Vs. M/S. Khaitan Manufacturing Company, Baddi, Solan.	20-08-2009
24.	10/2001	Rajinder Kumar Vs. Resort Manger, Koti Resorts, Shimla.	20-08-2009
25.	06/2006	Jai Ram Vs. XEN, IPH, Nerwa, Shimla	20-08-2009
26.	258/2003	Ram Asra Vs. Commissioner, M.C., Shimla.	25-08-2009
27.	138/2002	Bhag Singh Vs. Ex. Engg. H.P. State Industrial Dev. Corp., Baddi, Solan.	31-08-2009
28.	131/2006	Narinder Kumar Vs. XEN, HPSEB, Rampur, Shimla.	31-08-2009
29.	174/2006	Kamla Nand Vs. XEN, HPSEB, Rampur, Shimla.	31-08-2009
30.	99/2005	Sohan Lal Vs. Manager, H.P. Financial Corp., Parwanoo, Solan.	31-08-2009
31.	151/2006	Kundan Singh Vs. M.D., HRTC, Shimla-3 & Ors.	31-08-2009

By order,
Sd/-
Secretary.

Present:- None for petitioner.
Ms Manjula Upadhyay, Ld Csl for respondent.

At this stage. Ms Manjula Upadhyay, Ld Csl, for the respondent submits at the bar that the petitioner has already resigned from the respondent company, who also filed an application for the disposal of the case. It is already 11.40 AM but no appearance put in by the petitioner. Be called out again.

*Presiding Judge
Labour Court, Shimla.*

1.8.2009:

Present: None for petitioner.
Ms Manjula Upadhyay, Ld Csl for respondent.

It is 2.55 PM. Case is called out again but none appeared on behalf of the petitioner. I am satisfied that proper service has been affected on the petitioner through Shri Satish Sharma, State Secretary, AITUC but not present and further more it is prima-facie clear on record that the petitioner has resigned the service after accepting the full-final settlement from the respondent company, hence the claim of the petitioner is dismissed in default as a result of which the reference is ordered to be answered accordingly. Let a copy of this order be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced:

1.8.2009

*Presiding Judge,
Labour Court, Shimla.*

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.

Ref no. 267 of 1998.
Instituted on 10.12.1998.
Decided on 1.8.2009.

Lakshmi Chand C/o Jamuna Dass R/o Village Daso Majra P.O Mudh, Tehsil Nalagarh, District Solan, HP.

Petitioner.

Vs.

M/s Ballarpur Industries, Unit Shree Gopal Papers, Yamuna Nagar (Haryana).

Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.R Poswal, Ld. Csl.

For respondent : Shri Virender Sharma, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of services of Shri Lakshmi Chand by the M/s Ballarpur Industries, Unit Shree Gopal papers, Yamuna Nagar (Haryana) w.e.f. 14.3.1995 without

any notice, chargesheet, enquiry and without compliance of section 25F of the Industrial disputes Act, 1947 is legal and justified? If not, to what relief of service benefits, back wages, seniority and amount of compensation, Shri Lakshmi Chand is entitled to?"

2. The petitioner has filed a statement of claim asserting therein that he was appointed by the respondent as Forest Guard and worked with the respondent for years together, who had put in 240 days in each calendar year and that the petitioner was terminated from service by the respondent without serving requisite notice nor paid pay in lieu of notice and even no retrenchment compensation was paid on account of service rendered by the petitioner and that no enquiry whatsoever was held into the charges, if any, and the petitioner made efforts to get employment but failed and as such prayed for reinstatement in service alongwith consequential relief of back wages, continuity of service and allied service benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner which filed reply interalia raising preliminary objections of having no jurisdiction, maintainability and that the claim is vague without disclosing the date of cause of action. On merits, it is denied that the petitioner had put in 240 days in each calendar year. It is contended that the activity of collection of Bhabhar grass in Nalagarh block as well as other raw material collection depots was not of a permanent nature so there was no permanent workforce employed for the activity from time to time subject to the availability of the work, the workforce was engaged for fixed duration for which the work was available and the petitioner was appointed on 14.2.1995 for a period of 30 days upto 13.3.1995 and that the engagement of the petitioner was for a fixed duration which came to an end by an efflux of time and disengagement after expiry of specified period does not amount to retrenchment and the petitioner was not in continuous service of a period of one year, hence no notice, notice pay and retrenchment compensation was required to be paid to the petitioner on the expiry of the period of his engagement and as such prayed for the dismissal of the claim.

4. No rejoinder filed. The following issues were framed by this Court on 11.3.2004 on the pleadings of the parties.

1. Whether the termination of services of the petitioner by the respondent w.e.f. 14.3.1995 in violation of section 25F of the I.D Act?

OPP.

2. Whether the reference is not maintainable?

OPR.

3. Relief.

5. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1 No.

Issue no.2 No.

Relief. Reference answered in negative per operative part of award.

REASONS FOR FINDINGS.

Issue No.1.

7. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged by the respondent w.e.f. 1.7.1994 as Forest Guard, who continuously worked

with the respondent till 4.4.1995 but the respondent terminated his services w.e.f. 14.3.1995, who was posted at Nalagarh and the respondent used to cut and collect raw material from the forest at Nalagarh which was collected for supply to the Mill situated at Haryana, who was terminated by the Office Incharge of the Forest Centre at Nalagarh and no notice was given to him at the time of his termination nor retrenchment compensation was paid to him and the work was continuing with the respondent at the time of his termination and as such prayed for reinstatement alongwith all consequential benefits including back wages, seniority and continuity in service.

8. To rebut the case of the petitioner, the respondent has examined RW-1 Shri Ramesh Chand, who has stated that he has been posted as Manager (HR) with the respondent since 1998 and is well conversant with the facts of the case. They had the collection centre of dry grass at Nalagarh which was seasonal activity which they used to purchase from HP government on lease basis, which continued upto March, 1995 and afterwards it was discontinued and they used to engage seasonal employees during those days. No seasonal work exists after March, 1995 and they had not engaged any employee at any point of time at Nalagarh. The petitioner was engaged in 1993 for seasonal work and for specified time whose payment was made by cheque but the petitioner refused to accept the same and proved the termination receipts of the petitioner Ex. RA to Ex. RN and the engagement letters of the petitioner are Ex. RO and Ex. RP and the termination of lease by the State government is Ex. RQ and the other termination orders of the petitioner are Ex. R-1 and Ex. R-2. The petitioner was lastly engaged on 18.2.1995 vide Ex. RR and they had not engaged the petitioner on regular basis, hence the petitioner is not entitled to any relief as prayed by him.

9. The case of the petitioner is that he being the daily wages forest guard having been completed 240 working days in each calendar year and also in twelve calendar months preceding his termination was illegally terminated from service without any reason and no notice nor compensation was paid to him at the time of his termination and as such he is entitled for reinstatement with all consequential benefits.

10. On the contrary, the respondent contends that the petitioner was engaged against specific work and for specific period whose services automatically came to an end after the completion of the work, hence the petitioner is not entitled to any relief as claimed by him.

11. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged by the respondent as daily wages worker temporarily from time to time as is evident from the record but the petitioner has not proved on record that he has put in 240 working days in twelve calendar months preceding his termination. The petitioner tried to establish on record that he remained as Forest Guard with the respondent to collect and supervise the dry grass (Bhabhar) to be supplied to the Paper Mill in Yamunanagar (Haryana). It is significant to note that the petitioner examined himself as PW-1 on 21.2.2005 but has not proved his mandays chart in order to show that he had completed 240 working days in twelve calendar months preceding his termination. It is well settled in 2009 (120) FLR 1007 an Civil Appeal no. 4468 of 2005 of Hon'ble Supreme Court incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others in which it was held that:

“The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer.”

13. It was further held by their lordships of Hon'ble Supreme Court in **AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh** in which it was held that:-

“Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”

In the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination, hence the case of the petitioner does not fall under section 25F of the Industrial Disputes Act, 1947.

14. Now, turning to the other aspect of the case, the petitioner has tried to establish on record that he was engaged as Forest Guard by the respondent on regular basis but there is nothing on record which could show that the petitioner was engaged as Forest Guard on regular basis. On the other hand, respondent has proved on record that the engagement of the petitioner was purely on seasonal work on the availability of the work as is evident from the termination receipts Ex. RA to Ex. RN and engagement letters Ex. RO, RR and RP of the petitioner placed on record which clearly go to show that the petitioner was engaged as per the need of work from time to time, who was not engaged on regular basis at any point of time by the respondent, hence the services of the petitioner stood automatically dispensed with on the completion of work. Moreover, it is well settled in **(2006) 6 SCC 221, case titled as Reserve Bank of India V. Gopinath Sharma & Anr.** In which it was held that:-

“Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held, had no right to the post.”

15. Similarly in **2006 (2) SCC 794 in case titled as Haryana State Agricultural Marketing Board V. Subhash Chand & Anr.** in which it was held that:-

“If nature of service does not come within purview of definition of retrenchment in section 2(oo), question of applicability of section 25-G does not arise. Bare perusal of offer of appointment (set out in para 2 herein) clearly shows that respondent was appointed on seasonal contracts. Hence, respondent not having been reengaged on expiry thereof, he was not retrenched within meaning of section 2(oo), and his case fell exception in section 2(oo)(bb). Hence, section 25-G was inapplicable in his case and dispensing with engagement of respondent cannot be said to be unwarranted in law.”

16. Apart from it, it was further held incase titled as **Punjab State Electricity Board V. Darbara Singh reported in 2006 LLR 68 SC.** and incase titled as **Municipal Council Samrala V. Surhwinder Kaur reported in 2006 LLR 1009 SC** in which it was held that:

“Material on record established that engagement of workman was for specific period and as such his termination will be excluded as per the provisions of section 2(oo)(bb) of the I.D Act and hence, no retrenchment compensation will be payable on his termination even when he has worked for more than 240 days in the preceding 12 calendar months.”

17. Thus, on the strength of the above cited rulings and having regard to the entire evidence on record, it can safely be concluded that the services of the petitioner were not in violation of sections 25F of the Industrial Disputes Act, 1947 and rather the petitioner was engaged for seasonal work and for specific period whose services automatically came to an end after the expiry of seasonal work. Accordingly, this issue is decided in favour of the respondent and against the petitioner.

Issue No.2

18. In support to this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However I find nothing wrong with this reference which is perfectly maintainable. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issues no.1 and 2, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the Official Gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 1st August, 2009 in the presence of parties counsels.

(Parveen)

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.

Ref no. 105 of 2004.
Instituted on 5.7.2004.
Decided on. 19.8.2009.

Prem Kainthla S/o Shri Hari Dutt Kainthla R/o Village & P.O Narkanda, District Shimla, HP.

..Petitioner.

Vs.

The Block Development Officer, Narkanda, District Shimla, HP.

..Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri M.S Kanwar, Ld. Csl.

For respondent: Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:

“Whether the termination of services of Shri Prem Kainthla S/o Shri Hari Dutt Kainthla ex daily wages Supervisor by the Block Development Officer, Narkanda, District Shimla, HP w.e.f. 1.9.2001 after compliance the provisions of section 25F of the Industrial disputes Act, 1947 and whereas the junior to him are retained as alleged by the workman is proper and justified? If not, what relief of service benefits Shri Prem Kainthla is entitled to?”

2. The petitioner has filed a claim asserting therein that he has been issued muster roll no. 541 for the month of Feb. 1995 and then the petitioner continued till June, 2001, who had worked for 221 days in 1998, 286 days in 1999, 342 days in 2000 and 166 days in 2001 and that the petitioner had performed duties of supervisor, who was terminated from service without following the due process of law and that the muster roll of various categories were issued to the workmen but the department has extracted the work of peon and supervisor from the petitioner and before engagement as peon, the petitioner was working as peon and three sanctioned posts of peon are available with the department and even juniors to him Ms. Pinki and Pushpa have been retained by the department. No notice was issued to the workman under section 25F of the Industrial Disputes Act, 1947 and that by retaining juniors of the petitioner, the respondent has violated the provisions of section 25G and 25H of the Industrial Disputes Act but has also violated the principle of last come first go and that after terminating the services of the petitioner Shri Muni Lal has been engaged as daily wages peon by the department and as such the respondent has not acted in accordance with law and as such prayed that the termination notice dated 30.7.2001 which has been issued without following the procedure of law as no retrenchment compensation has been paid and as such his termination be quashed and set aside and order for his reinstatement with all consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner which filed reply interalia contending that the petitioner was firstly engaged as peon on daily wages against work contingencies w.e.f. Feb. 1998 to October, 1998 and then w.e.f. Jan. 1999 to July, 2001 as supervisor subject to availability of funds under work contingencies and the petitioner has to be terminated by issuing one month retrenchment notice under section 25F of the Industrial Disputes Act, 1947 dated 20.7.2001 with compensation amounting to Rs. 2470/-. It is admitted that the petitioner had performed duties of the supervisor w.e.f. Jan. 1999 to June, 2001 against work contingencies. It is denied that the junior to the petitioner has not been appointed by the respondent on daily wages except on compassionate grounds, hence there is no violation of section 25G and H of the Industrial Disputes Act, 1947 and as such prayed for the dismissal of the claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 1.3.2006 on the pleadings of the parties:

1. Whether the services of the petitioner have been illegally terminated by the respondent without complying the provisions of section 25F of the Industrial Disputes Act, 1947? If so, its effect?

OPP.

2. If issue no.1 is proved in affirmative, to what relief of service benefits, the petitioner is entitled to?

OPR.

3. Whether the petition in the present form is not maintainable?

OPR.

4. Relief.

6. I have heard the Ld. Counsel for the petitioner and Ld. DDA for respondent and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1.	Yes.
Issue no. 2.	Entitled to reinstatement with seniority and continuity but without back wages.
Issue no.3.	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No.1

8. Coming to this issue, the petitioner has examined himself as PW1, who has stated that he was engaged as peon in Feb. 1998 and he was removed from service in July, 2001, who worked for more than 240 days prior to his removal. He was engaged as supervisor in 1999 without any order from the office. He was directed to work as supervisor and he was told that as there was no funds available in the contingency against which he was engaged and the authorities assured that he would be engaged as and when the funds are available. Pradeep Roy, JE was also working on contingency and he was working under Pradeep Roy, who was already been regularized and Mr. Sees Ram was supervisor prior to his joining, who has been regularized and was appointed as Vikas Adhikari, Gram Panchayat, Thanadhar and after his termination, the work of supervisor is being looked after by the JE branch of BDO office and contingency funds are still coming to the office and retrenchment notice Ex. PA was wrongly issued to him by the department and at his place two women have joined and as such prayed for reinstatement with all benefits.

9. To rebut the case of the petitioner, the respondent has examined RW1 Ms. Chetna Khadwal, BDO, Narkanda, who has stated that the petitioner was engaged as peon on daily wages against work contingency, who worked w.e.f. Feb. 1998 to October, 1998 and then he was reengaged as Supervisor from October, 1999 till 31st July, 2001 against work contingency subject to availability of funds and then the petitioner had to be retrenched from service as the contingency funds were reduced by the Directorate Rural Development. The petitioner was served with the notice Ex. PA and compensation of Rs. 2470 was paid to the petitioner vide cheque dated 28.7.2001 and proved the instruction issued by the Directorate Ex. PB and the other workmen Pinki Devi & Pushpa Devi were engaged on compassionate ground vide letter Ex. PC & PD by the department and the petitioner abandoned the job of peon and later on accepted the job of supervisor.

10. The case of the petitioner is that he was engaged as peon on daily wages by the respondent and then he was deputed to work as supervisor without any written orders, who had completed more than 240 days in each calendar year was illegally terminated from service without notice and compensation and even juniors to him are still working with the respondent department and as such he is entitled for reinstatement in service with all consequential benefits.

11. On the contrary, the respondent contends that the petitioner was legally terminated from service after serving a notice Ex. PA upon him and no juniors to the petitioner are working with the respondent except on compassionate grounds, hence the petitioner is not entitled to any relief as claimed by him.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner was initially engaged by the respondent as daily wages peon and then the petitioner had worked as supervisor with the respondent department, who worked w.e.f. Feb. 1998 to October, 1998 as peon and w.e.f. October, 1999 to 31st July, 2001 as supervisor which fact has not been disputed by both the parties. It is also the admitted case of both the parties that notice Ex. PA was served upon the petitioner and a sum of Rs. 2470/- was paid to the petitioner as compensation by the respondent. It is also admitted by RW1 Ms. Chetna Khadwal that the petitioner had completed 240 working days in a calendar year 1998 preceding his termination. It is also admitted that the petitioner had put in 240 working days in the years 1999 to 2001 as Supervisor. No doubt that the respondent has tried to establish on record that the services of the petitioner were legally terminated after serving one month's notice but the respondent has failed to prove on record that the proper and legal notice was given to the petitioner at the time of his retrenchment Moreover, **Section 25-F of the 'Act' says that:**

25-F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)

14. In the instant case, the respondent has failed to comply with the provisions of section 25F properly which has not served the legal notice on the appropriate government by notification in the official gazette as envisaged under section 25F © of the Industrial Disputes Act, 1947. The petitioner has stated on oath that he was initially engaged as peon by the respondent department and then he also worked as Supervisor with the respondent department which fact has also been admitted by the respondent as the respondent orally ordered the petitioner to do the work of the Supervisor, hence an adverse inference is drawn against the respondent as the respondent had orally asked the petitioner to do the work of supervisor without any office order which goes to show that

the petitioner was also asked to do the duties of Supervisor alongwith the peon and therefore the respondent cannot take the benefit that the petitioner has accepted the offer of supervisor by doing that job as the petitioner has proved on record that he has completed 240 working days in twelve calendar months preceding his termination as supervisor.

15. Apart from it, it is also proved on record that the respondent had retained the juniors to the petitioner in service by giving them job on compassionate ground but the respondent has failed to comply with the proper procedure for giving the job on compassionate grounds to the fresh persons without giving any opportunity to the petitioner. Moreover, the respondent had made appointments to the junior persons on compassionate ground or by handicapped person by ignoring the senior workman. It is also not proved on record as to how the juniors were retained on job and under which provisions of law as there is nothing on record which could show that the respondent has engaged the junior persons on compassionate grounds. It was held in 2007 (2) Shimla Law Cases 279 incase titled as Superintending Engineer, HPSEB & another Vs. Bhura Ram & another in which it was held that :

“Where new workmen engaged without offering the job to respondents- Labour Court recorded findings that provisions of the Act violated and the respondents entitled to protection of section 25H and the Hon’ble High Court held that relief cannot be denied to the workmen merely on the ground of delay and the order passed by the Labour Court-cum-Industrial Tribunal upheld.”

16. In view of the above observation made by the Hon’ble High Court in similar situated workmen, I hold that the respondent has violated the provisions of section 25G & H of the Industrial Disputes Act, 1947 by retaining the juniors to the petitioner in job. Here I am also fortified with a view taken by their lordships of Hon’ble Supreme Court incase titled as State of Haryana Vs. Dilbag Singh reported in 2007 LLR 72 SC in which it was held that :
“Where Labour Court found that person junior to respondent was still working and thus there was breach of section 25-G & 25-H of the Act. Court directed reinstatement with 50% back wages.”

Similarly, our own Hon’ble High Court of HP has held incase titled as State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903. in which it was held that :-

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

17. Thus, having regard to the above cited rulings and having regard to the entire evidence on record, I have no hesitation in coming to the conclusion that the services of the petitioner have been illegally terminated by the respondent without following the proper procedure of Industrial Disputes Act, 1947. Accordingly, issue no.1 is decided in favour of the petitioner and against the respondent.

Issue No. 2.

18. Since I have held under issue no.1 above that the services of the petitioner have been illegally terminated by the respondent after retaining the juniors to the petitioner and without following the proper procedure of Industrial Disputes Act, 1947, hence the petitioner is held entitled to reinstatement as Supervisor with seniority and continuity from the date when he was asked to perform the duties of Supervisor. However, the petitioner is not entitled to back wages as

he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of petitioner and against the respondent.

Issue No. 3

19. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondent.

Relief

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service as supervisor from the date of his illegal retrenchment forthwith with seniority and continuity. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 19th August, 2009 in the presence of parties counsels.

(Parveen)

J.S MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.

Ref no. 169 of 2003.
Instituted on 17.5.2003.
Decided on. 1.8.2009.

Raj Kumar S/o Shri Kamla Singh C/o Mangat Ram Near Five Storeyed Building, Sood Gali, District Una, HP.

Petitioner.

Vs.

1. The Managing Director, HP Agro Industrial Corporation Ltd. Nigam Vihar, Shimla-2, HP.
2. The Divisional Manager HP Agro Industries Corporation Ltd. Amb, District Una, HP (Now Divisional Manager Jawalamukhi, District Kangra HP).

Respondents.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri H.S Upadhayay, Ld. Csl.

For respondent: Shri Atul Jhingan, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:-

“Whether the termination of the services of Shri Raj Kumar S/o Shri Kamla Singh, Tractor Operator by the Managing Director, HP Agro Industries Corporation Ltd. Nigam Vihar Shimla-2 HP 2. The Divisional Manager HP Agro Industries Corporation Ltd. Amb, District Una, HP (Now Divisional Manager Jawalamukhi, District Kangra HP) w.e.f. 26.6.1980 without complying with the provisions of Industrial disputes Act, 1947 is proper and justified? If not, what relief of service benefits the aggrieved workman is entitled to?”

2. The petitioner has filed a claim asserting therein that the petitioner was appointed as a Tractor Operator by the respondent no.2 on 29.9.1973 and the appointment was made as a result of a test/interview on a fixed pay scale and allowances admissible to the employees of the corporation from time to time and that the services of the petitioner were terminated on 26.6.1980 without show cause notice while the petitioner had completed seven years of service but the order of termination has been issued under a caption disposal of surplus staff and no particulars of any retrenchment or reason to justify the termination of services had been issued and that the petitioner made an application against illegal termination to the Labour Department but no action was taken and then the petitioner filed a civil suit in the court of Ld. Sub Judge 1st Class at Amb District Una seeking relief of declaration of his services as invalid and after full trial, learned Sub Judge pronounced its judgment dated 10.6.1985 and then the petitioner preferred an appeal before the District Judge, Una which ordered to send the file alongwith the record to the Registrar, Hon’ble High Court of HP for further transmission and then the matter was sent to the Administrative Tribunal and then the case was finally decided on 15.7.1999 and the respondents challenged the same before the Hon’ble High Court of HP in CWP no. 371/99 which was allowed by the Hon’ble High court vide its order dated 18.12.2001 and that the petitioner being aggrieved by the order dated 20.12.2001 assailed the same before the Hon’ble Supreme Court by filing the special leave petition which was dismissed by the Hon’ble Supreme Court and that after having failed before the Hon’ble Supreme Court, the petitioner was left with no other course but to resort to the remedy provided under the Industrial Disputes Act and that the services of the petitioner were terminated by the respondent corporation when the petitioner had already completed his probation period and even no notice was served upon the petitioner by the respondent before terminating his services and that the petitioner is being continuously wronged for over two decades for one reason or the other, who is setting up his statement of claims after the jurisdictional controversy has been laid to rest by the Hon’ble Supreme Court and the petitioner prayed that the termination dated 26.6.1980 is illegal, null, void, wrong, ultra-vires of the constitution and against the principle of natural justice and the same be quashed and set aside and reinstatement from the date of termination with all consequential service benefits alongwith arrears with interest, hence this claim.

3. The respondents resisted and contested the claim of the petitioner which filed reply interalia contending that the services of the petitioner were terminated on 26.6.1980 on retrenchment under disposal of surplus Tractor Operators. It is denied that the petitioner had completed seven years of service. It is also denied that the petitioner was not given opportunity to show cause, who was retrenched by virtue of detailed order dated 10.6.1980 of the General

Manager and under instructions from the Managing Director and the petitioner was given all benefits which are consequential to such retrenchment as his service record was not good as compared to other operators. It is also contended that the petitioner had been advised to seek the remedy by the Court of Ld. Sub Judge, Amb District Una but the petitioner assailed that order and that the petitioner was given one month notice and all due benefits applicable to the case and that the petitioner cannot be allowed to take advantage of his own acts of omission and commission and as such prayed for the dismissal of the claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 4.3.2004 on the pleadings of the parties:

1. Whether the termination of services of the petitioner by the respondents w.e.f. 26.6.1980 is violative of the provisions of the Industrial Disputes Act, 1947 and regulation 19 of the service regulations, 1975 of the respondent corporation?

OPP.

2. Whether the petitioner is estopped from filing the petition due to his act and conduct?

OPR.

3. Whether the reference suffers from delay and laches, if so, its effect?

OPR.

4. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1.	Yes.
Issue no. 2.	No.
Issue no.3.	No.

Relief.	Reference answered in affirmative per operative part of award.
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REASONS FOR FINDINGS.

Issue No.1

8. Coming to this issue, the petitioner has examined himself as PW1, who has stated that he was engaged with the respondent as Tractor Operator in 1973 as per appointment letter Ex. PW1/A and continued as such upto 1980 and he was given termination letter Ex. PW1/B on 26.6.1980 and then he moved an application against his illegal termination to the Labour Inspector Una and thereafter the reconciliation proceedings were tried but could not succeed and as such he was told that the failure report has been sent to Labour Commissioner, Shimla and on enquiry in the office of Labour Commissioner, Shimla he was told that no failure report has been received by them and in these circumstances, the failure report could not be located and then he was advised by Shri Hazari Lal Advocate to file a civil suit and then a legal notice Ex. PW1/C was served upon the

respondent and the copy of civil suit is Ex. PW1/D and then the suit was decided and he appealed before the District Judge, Una vide Ex. PW1/E which was referred to the Hon'ble High Court for disposal in accordance with law and then the Hon'ble High Court transferred the case to the Administrative Tribunal for disposal and the Tribunal decided the case in his favour vide Ex. PW1/F and then the respondent appealed against the order of the Administrative Tribunal before the Hon'ble High Court and the copy of the order of Hon'ble High Court is Ex. PW1/G and then he approached the Hon'ble Supreme Court vide Ex. PW1/H and then he again approached the Labour reconciliation officer for redressal of his grievances in respect of illegal retrenchment in 1980, who was retrenched illegally against the provisions of law and without following the provisions of Industrial Disputes Act, 1947 and at the time of his illegal retrenchment, his juniors S/Shri Rajinder Kumar, Trilochan Kumar, Tilak Raj, Aman Singh Verma and Om were retained, who are still working. He had moved an application for his grievances before authorities and as such prayed for reinstatement in service from the date of illegal retrenchment alongwith all consequential benefits, seniority and back wages.

9. To rebut the case of the petitioner, the respondent has examined RW1 Shri G.D Kaundal, who has stated that he has been authorized to make the statement on behalf of the respondent vide Ex. RA. The petitioner was engaged in Oct. 1973 as Tractor Operator, who worked till 26.6.1980 when his services were retrenched and one month notice for retrenchment was given to the petitioner on 24.7.1979, who was retrenched on 26.6.1980 vide Ex. PW1/B. The petitioner challenged the termination before the court of Sub Judge, Una which was dismissed on the point of jurisdiction and they had not received any letter from Labour Conciliation officer before 1982. The petitioner agitated his matter before District Judge, Una, who referred the matter to the Hon'ble High Court as the HP Administrative Tribunal Act came in existence and the matter was sent to Administrative Tribunal for adjudication which was allowed and the orders of the Tribunal was challenged before the Hon'ble High Court and the order of Administrative Tribunal was set aside and the orders of the Hon'ble High Court has been upheld by the Hon'ble Supreme Court and then the petitioner came to this court. The retrenchment orders were passed by the Divisional Manager on the direction of the Head Office and document RX is correct as per the record and during the conciliation proceedings Ex. RB, the petitioner was called by the respondent corporation for conciliation and the petitioner thereafter did not approach the respondent and as such the petitioner is not entitled to the relief claimed by him and the petition be dismissed.

10. The case of the petitioner is that he being the daily wages Tractor Operator having worked for more than seven years and completed more than 240 days in each calendar year was illegally terminated from service without notice and compensation and even juniors to him are still working with the respondent department and as such he is entitled for reinstatement in service with all consequential benefits.

11. On the contrary, the respondent contends that the petitioner was legally terminated from service after serving a notice upon him and this matter was already decided upto the Hon'ble Supreme Court, hence the petitioner is not entitled to any relief as claimed by him.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged by the respondent as Tractor Operator in October, 1973, who was retrenched in the year 26.6.1980 whereas the notice for retrenchment was given to the petitioner on 24.7.1979 vide Ex. P7 which fact has not been disputed by both the parties. After the close scrutiny of the notice Ex. P7 placed on record it is clear that no reason for discharging from service has been indicated by the respondent. Moreover, it stands proved on record from the appointment letter Ex. PW1/A that

the petitioner was on probation for one year which may be extended for further at the direction of the M.D but there is nothing on record which could show that how much period for probation was extended by the respondent from time to time and as such it cannot be said that the petitioner was on probation when the petitioner was discharged vide order Ex. P7. It is borne out from the record that the petitioner worked with the respondent continuously from October, 1973 to 26.6.1980. It is significant to note that the General Manager who acted on behalf of the Managing Director has held in Ex. RX that Shri Raj Kumar was placed at sr. no.4 in seniority list but he was retrenched from service after retaining his juniors Trilochan Singh, Amar Singh, Rajinder Kumar and Tilak Raj for the reasons best known to him and further no domestic enquiry was conducted by the respondent to prove the charges of proceeding on leave by Raj Kumar petitioner from time to time and for collecting Rs. 1590/- as threshing charges from the farmers on behalf of the corporation and kept this money unduly with him for three months and obviously therefore without holding any domestic enquiry against the petitioner, it was imperative to follow the principle of natural justice by giving the opportunity and there is violation of the principles of the natural justice and therefore the case of the petitioner squarely falls under section 25F of the Industrial Disputes Act, 1947 as the petitioner had worked with the respondent for more than seven years and satisfactorily completed period of probation as there is no order on record to show that the probation of the petitioner was extended by the respondent from time to time. No doubt that the respondent has tried to establish on record that the services of the petitioner were legally terminated after serving one month's notice but the respondent has failed to prove on record that the proper and legal notice was given to the petitioner at the time of his retrenchment. Now, turning to the other aspect of the case, the petitioner has proved on record that his juniors are still continuing with the respondent corporation as is admitted by RW1 Shri G.D Kaundal that the petitioner was at serial no. 4 in the seniority list and his juniors are still working in the department, who has further clarified that the work of the petitioner was not satisfactory but there is nothing on record which could go to show that the work of the petitioner was not satisfactory as no explanation nor any show cause notice was issued to the petitioner by the respondent against his working nor any domestic enquiry was conducted against the petitioner by the respondent at any point of time in order to find out the truth of allegation levelled against the petitioner. It may not be out of place to mention here that the retrenchment notice was issued by the respondent on 24.7.1979 whereas the petitioner was allowed to continue till 26.6.1980 which clearly shows the negligent attitude of the respondent corporation against the petitioner and since it is fully proved on record that the persons junior to the petitioner is still continuing and thus there is breach of section 25G & 25H of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordships of Hon'ble Supreme Court incase titled as State of Haryana Vs. Dilbag Singh reported in 2007 LLR 72 SC in which it was held that :

“Where Labour Court found that person junior to respondent was still working and thus there was breach of section 25-G & 25-H of the Act. Court directed reinstatement with 50% back wages.”

Similarly, our own Hon'ble High Court of HP has held incase titled as State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903. in which it was held that :-

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

Now, advertng to the legal aspect of the case, it is borne out from the record that the petitioner had earlier agitated the matter before the Ld. Sub Judge, Amb, who dismissed the suit on the point of jurisdiction and the petitioner preferred an appeal against that order dated 10.6.1985 before the District Judge Una, who ordered to send the record of the case to the Registrar of

Hon'ble High Court for further transmission to the State Administrative Tribunal, Shimla vide order dated 22.9.1986 Ex. RW1/E and the Administrative Tribunal vide order dated 15.7.1999 in T.A 15/88 dated 15.7.1999 Ex. PW/F granted the relief to the petitioner. Having felt aggrieved and dissatisfied by the order of the Administrative Tribunal, the respondent assailed the order before the Hon'ble High Court in CWP no. 371 of 1991 and the Hon'ble High Court held that Administrative Tribunal has no jurisdiction and set aside and quashed the order of the Administrative Tribunal dated 15.7.1999 in T.A no. 15/88. However the Hon'ble High Court has held in that order that the respondent no.1 who is petitioner in this case to take appropriate proceeding in accordance with law and as such it is clear that the Hon'ble High Court in CWP no. 371 of 1999 has set aside and quashed the order of the HP Administrative Tribunal for want of jurisdiction and did not touch the merits of the case and also allowed the respondent no.1, who is petitioner in this case to make appropriate proceedings in accordance with law and even the Hon'ble Supreme Court did not find infirmity in the judgment of the Hon'ble High Court under challenge and the Special Leave Petition was dismissed as is evident from Ex. PW1/H and obviously therefore, having regard to evidence on record it can safely be concluded that the petitioner has rightly approached this Court through reference under section 10 of the Industrial Disputes Act, 1947 and all the Hon'ble Courts upto Hon'ble Supreme court have not given findings on the merits of the case and the order of the Hon'ble High Court is reproduced as under:

“Since we have held that the Administrative Tribunal had no jurisdiction, it is open to respondent no.1 to take appropriate proceedings in accordance with law. It is also open to respondent no.1 to make appropriate application/ representation to the petitioner corporation.”

14. Thus, having regard to entire evidence on record and in view of the fact that the juniors to the petitioner are still working with the respondent corporation and even the petitioner had put in seven years of service with the respondent and the respondent had failed to serve a proper notice under section 25F of the Industrial Disputes Act, 1947 before his termination and as such I have no hesitation in coming to the conclusion that the juniors to petitioner are still working with the respondent corporation and as such the termination of services of petitioner is violative of the provisions of the Industrial Disputes Act, 1947 as the respondent has violated the principle of first come last go and also violated the provisions of sections 25F, 25-G & H of the Industrial disputes Act, 1947. Accordingly issue no.1 is decided in favour of petitioner and against the respondents.

Issue No.2

15. In support of this issue, no evidence was led by the respondent nor it was pointed out during the course of arguments as to how the petitioner is estopped from filing the claim petition by his own acts and conduct. In view of no such evidence on record, I have no alternative but to hold that the petitioner is not estopped from filing this claim petition by his own acts and conduct. Accordingly, issue no.2 is decided in favour of petitioners and against the respondents.

Issue No.3

16. In support of this issue, no evidence was led by the respondents being the legal issue. However, I have scrutinized the record of the case and observed that the petitioner approached the wrong forum under the wrong guidance and for this reason he failed to approach the Appropriate Court within reasonable period. However, the relief cannot be refused to the petitioner on the point of delay and laches and moreover, the delay on the part of the petitioner is not intentional but due to his lack of knowledge about the legal proceedings as he was wrongly advised by his counsel and moreover there is no limitation under the I.D Act as it was held by their lordships of **Hon'ble Supreme Court as reported in (1999) 6 SCC 82 case titled as Ajayab Singh Vs. Sirhind Co-**

operative Marketing –cum- processing Service Society Limited and Another in which it was held that:-

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Thus, on the strength of this ruling, it can safely be concluded that this petition does not suffer from delay and laches. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondents.

RELIEF

17. As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service from the date of his illegal retrenchment forthwith with seniority and continuity. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 1st August, 2009 in the presence of parties counsels.

(Parveen)

J.S MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.

Ref no. 239 of 1998.
Instituted on 26.10.1998.
Decided on 1.8.2009.

Virender Kaushal S/o Shri Hari Kishan Kaushal Village Gadiar, District Solan, HP.
Through Shri J.C Bhardwaj, General Secretary, HP AITUC, Saproon Distt. Solan 173211 HP.

Petitioner.

Vs.

M/s Cosmo Ferrites Ltd. Village Sula, P.O Jabli, District Solan, HP.

Respondent.

Reference under Section 10 of the Industrial disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, Ld. AR.

For respondent : Shri Rahul Mahajan, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“क्या मै० कास्मो फेराटार्ज लि० जाबली, जिला सोलन द्वारा कामगार श्री बीरेन्द्र कौशल को दिनांक 8.3.1997 से नौकरी से निकाले जाने बारे घरेलू जांच, निष्पक्ष, न्यायसंगत और नियमानुसार की गई है, यदि नहीं, तो कामगार श्री बीरेन्द्र कौशल किन सेवा लाभों और क्षतिपूर्ति का हकदार है ।

2. The petitioner has filed a statement of claim asserting therein that the petitioner at the first instance was employed in the service of the respondent company during November, 1992 as helper in the grinding section and after completion of more than two years satisfactory service, the petitioner was promoted and put under training as operator and after training, the petitioner was appointed as regular operator w.e.f. 16.3.1996 and continued on the same post till his services were illegally terminated on 8.3.1997 and his last drawn wages were Rs. 1093/- per month and that the petitioner served with the respondent company for more than 240 days in each year of his service tenure and as such his services were continuous for the purpose of section 25B of the Act and that an illegal domestic enquiry was ordered against the petitioner on baseless charges with ulterior motive to dismiss the petitioner from service of the company on 12.2.1997 and the enquiry was not conducted in just and fair manner and no opportunity was afforded to the petitioner to defend his case and a day to day enquiry was conducted through the partial enquiry officer and that the enquiry was vitiated for the untimely payments of the subsistence allowances and the enquiry was conducted in a haste and there was no cross examination of witnesses nor the opportunity was given and that the termination from service was bad on the ground that no final report of the enquiry proceedings with second show cause notice was sent to the petitioner which is mandatory obligation upon the employer to hear the workman upon the quantum of punishment to discharge the liability of offering the opportunity under natural justice and that the right of livelihood, its continuity and better service conditions are recognized as fundamental rights which cannot be snatched in an arbitrary manner and that the petitioner is unemployed from the date of his retrenchment and as such the petitioner is entitled to back wages and that the enquiry was bad and illegal prior to commencement as no procedure for conducting the enquiry was settled and as such prayed for reinstatement from the date of termination i.e 8.3.1997 with full back wages and other incidental service benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner which filed reply inter alia contending that the petitioner was appointed on 1.2.1995 through M/s Chandigarh Liaison and Allied Services Pvt. Ltd and after leaving the job with the aforesaid company, the petitioner submitted the letter for appointment as a worker with respondent, who was appointed w.e.f. 15.9.1995 for six months on training basis vide letter dated 26.9.1995 and then the petitioner vide letter dated 16.3.1996 was appointed on probation for six months and vide letter dated 16.9.1996 his probation period was extended upto 15.3.1997 as his working was not found satisfactory and upto the mark. It is denied that the petitioner was appointed as regular operator and as such the petitioner is trying to conceal the true factual position and is putting totally misleading facts and figures and the work and conduct of the petitioner was not upto the mark, who was not found suitable for the job. It is also contended that the petitioner had indulged in serious misconduct during his probation period and a show cause notice dated 13.2.1997 was issued to the petitioner which was replied by him and subsequently the chargesheet dated 5.2.1997 was also issued which

was also replied by the petitioner and the reply was not found satisfactory and then a proper domestic enquiry was initiated against the petitioner and an Enquiry Officer was appointed, who conducted the enquiry as per the rules and principles of natural justice, who gave all opportunities to the petitioner to putforth his case during the enquiry proceedings and that a proper enquiry was conducted against the petitioner which was conducted in just and fair manner and without any ulterior motive and the petitioner never raised any objection against the appointment of the Enquiry Officer, who participated in each and every days proceedings and cross examined the witnesses produced by the management and the copies of which were supplied to the petitioner. The Enquiry Officer held the petitioner guilty of charges levelled against him, hence his services were discharged and that the petitioner was paid the subsistence allowance and the enquiry was conducted in his presence who was given every opportunity to present his case and to cross examine the witnesses and that the petitioner was discharged from service as he was not found suitable for the job after a proper domestic enquiry which was conducted as per the Rules and Standing Orders of the company. It is denied that the rights in his case have been snatched in an arbitrary manner. It is also contended that all the principle of natural justice were duly complied with during the course of enquiry proceedings and that the petitioner from the date of his discharge is gainfully employed and is not entitled for either reinstatement or back wages as his services were discharged during the period of probation when he was not found suitable for the job and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 7.11.2000 on the pleadings of the parties.

1. Whether the enquiry conducted against the petitioner is not fair and legal? If so, to what benefits the petitioner is entitled to?

OPP.

2. Whether petitioner was on probation? If so, its effect?

OPR.

3. Relief.

6. I have heard the Ld. AR for the petitioner and Ld. Counsel for the respondent and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1	No.
Issue no.2	Yes.
Relief.	Reference answered in negative per operative part of award.

REASONS FOR FINDINGS

Issue No.1 & 2

8. Both these issues are taken up and discussed together being correlated and interconnected for sake of convenience and to avoid repetition. Coming to these issues, the petitioner has examined himself as PW-1, who has stated that he was employed as helper with the respondent in

November, 1992, who was working in the grinding section. He was issued letter of appreciation Ex. PA by the respondent. He was also issued appointment letter Ex. PB on 26.9.1995 irrespective of the fact that he was already working with the respondent since November, 1992. He had not moved any application for appointment nor he was interviewed for the said post at the time of issuance of appointment letter Ex. PB. Another letter Ex. PC of appreciation was issued on 1.1.1996 by the respondent to their team of which he was also member and on 16.3.1996 letter Ex. PD was issued by the respondent to him vide which he was stated to have been placed on probation despite the fact that he was already working as operator since the very inception. On 13.1.97, he was served with show cause notice Ex. PE which was duly replied by him vide Ex. PF and on 5.2.1997 chargesheet Ex. PG was served upon him which was also replied by him vide Ex. PH and letter Ex. PJ was served upon him by the respondent on 15.2.1997 vide which he was intimated about the appointment of the Enquiry Officer and the intending enquiry against him. After issuance of letter Ex. PJ, he was not permitted to enter in the factory premises by the management and though he was placed under suspension during enquiry who was not paid any subsistence allowance. No enquiry was held against him and instead he was called on one day and his signatures were obtained on the enquiry proceedings. On the conclusion of the enquiry, he was neither supplied with a copy of the enquiry report nor any show cause notice was issued to him against the proposed disciplinary action contemplated against him and letter of appreciation Ex. PK was issued in his favour on 15.6.1996 vide which he was appreciated for punctuality and was also given a cash award of Rs. 30/-. He was victimized for the reason that he was claiming pay benefits with his colleagues who had joined alongwith him in November, 1992 and were getting higher wages as compared to him and finally he was served with order of dismissal vide Ex. PL on March, 97 and since he was dismissed illegally, hence prayed for reinstatement alongwith the consequential benefits including back wages.

9. To rebut the case of the petitioner, the respondent has examined three RWs in all. RW-1 Shri Tribhuvan Agnihotri has stated that he has been working as General Manager of the company. The petitioner was appointed vide letter dated 26.9.1995 as trainee operator for six months as per copy of letter Ex. RW1/A and the petitioner applied for job vide Ex. RA and vide letter Ex. RB, the petitioner was appointed on probation for a period of six months which was extended vide Ex. RC and Shri Ramesh Sharma, who was shift Incharge at that time had reported the disobedience of his instruction vide RW1/B and on 31.1.1997, the petitioner tried to punch the attendance card of Shri Bhumi Dutt and the matter was reported by the Security Guard and another worker Shri Vikas Katoch, who also gave complaint in writing. A complaint was also given by Dheeraj Sharma and Ronald Bob whose signatures are encircled as B, C and D in red in Ex. RW1/C, Ex. RW1/D and Ex. RW1/E. These persons are not working presently as they had left the job of the respondent and Ex. RW1/F is a copy of complaint written by Vikas Katoch whose signatures are encircled in red as E. The respondent served show cause notice Ex. RW1/G on 31.1.1997 which was replied by the petitioner vide Ex. PF. Thereafter the chargesheet Ex. PG was served upon the petitioner and Ex. PH is the reply given by the petitioner. Mr. Dhiman was appointed as an enquiry officer and the letters were sent to the petitioner through registered post under receipts no. 5321 and 5322 and the intimation regarding the appointment of Enquiry Officer was sent to the petitioner on 12.2.1997 personally which was refused by the petitioner vide Ex. RW1/J and then the letter was sent through RAD which was also received back with the report of postal authorities that the addressee refused to take it. The envelope and AD is RW1/K who identified the signatures of Shri A.K Sood encircled in red at point G, A.K Saran in red at point G and S.C Katoch at point H on document Ex. RW1/J and RW1/H. Letter Ex. PJ was also issued by them but on the request of the petitioner, Hindi translation Ex. RW1/L was given and letter Ex. RD dated 17.2.1997 was received by the workman. He also recognized the signatures of Shri P.D Dhiman who was working with him for 12 years which is encircled in red on RW1/M and Ex. RF (page 2 to 17). He also recognized his signatures on Ex. RW1/N encircled in red. On receipt of enquiry report, second show cause notice was sent to the petitioner vide letter dated 6.3.1997 which

was received by the petitioner vide Ex. RW1/O and then they sent full and final settlement letter to the petitioner. They had their standing orders mark X and they had paid the subsistence allowance to the petitioner vide Ex. RW1/P. The petitioner had not lodged any protest or complaint to him against any officer of the respondent in his capacity as General Manager. Shri Tek Chand Attri was the General Secretary of the Union and had worked under him for seven years and identified his signatures on Ex. RF6 in red RF7, RF8 and RF13 at point Z in all shuts in red. The petitioner is running grocery shop and is earning Rs. 1,000/- to 8,000/- per month and the petitioner did not raise any objection/protest against enquiry at any point of time and Shri P.D Dhiman resigned on 20.6.2004 and they could not contact the persons who had left the job.

11. RW2, Shri Sanjeev Katoch has stated that he identified his signatures on Ex. RF13 encircled in red at point AB, who knows the petitioner, who was present during the course of enquiry alongwith Tek Chand Attri, A.K Saran and the signature of above persons were taken after recording their statement on Ex. RW13.

12. RW3, Shri Tribhuvan Agnihotri has stated that inspite of the best efforts of the company, Shri P.D Dhiman could not be served at his last known address with the company and his whereabouts are not known and proved the affidavit Ex. RX of Shri S.S Rana, Senior Personnel Officer, who personally visited the residence of Shri P.D Dhiman.

13. Shri J.C Bhardwaj, Ld. AR for the petitioner has vehemently argued at the very out set that the services of the petitioner were illegally terminated by the respondent without giving proper opportunity to defend the petitioner and without compliance of the provisions of Industrial Disputes Act, 1947.

14. On the contrary, Shri Rahul Mahajan, Ld. Counsel for the respondent controverted the arguments of the petitioner and has submitted that the services of the petitioner were legally terminated by the respondent after affording full opportunity to defend him and a proper and fair enquiry was conducted against him, hence the petitioner is not entitled to any relief as prayed by him.

15. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

16. After the close scrutiny of the record of the case, it remains a fact that the petitioner was given a job of operator on a probation of six months but his probation was not found satisfactory, hence his probation was extended. The allegation against the petitioner that while he was on duty in C shift 1996 (10 PM to 6.00AM) on 21.12.1996 and his next duty hours of petitioner was to commence from 10.00 PM to 6.00 AM on 21.12.1996 as per the direction of the shift Incharge but the petitioner despite the direction of shift Incharge, continued with his duty in A shift on 21.12.1996, who was directed to do duty in C shift and as such Ramesh Sharma the then shift Incharge then reported the disobedience of his instructions vide Ex. RW1/B and subsequently on 31.1.1997, the petitioner tried to punch the attendance card of Shri Bhawani Dutt which was reported by the Security guard and one Shri Vikas Katoch another worker who gave the complaint in writing. It is also proved on record that the petitioner was called upon to show cause by serving show cause notice whose reply was not found satisfactory and then the enquiry was initiated against him and Shri P.D Dhiman was appointed as an Enquiry Officer, who informed the petitioner for enquiry proceedings to be conducted against him. Respondent Management led their evidence and the petitioner was given ample opportunity to cross examine the witnesses of the respondent and the petitioner was given opportunity to lead his evidence in his defence and the enquiry officer has submitted his enquiry report to the respondent management and the second show cause notice alongwith enquiry report was sent to the petitioner and after considering the

entire enquiry report, the petitioner was discharged from service by the respondent management as the petitioner remained under probation at the relevant time. It is significant to note that the respondent management has given ample opportunity to the petitioner to defend his case and further more the petitioner was never condemned unheard. There is nothing on record which could show that the work of the petitioner was found satisfactory and was appreciated by the respondent from time to time. RW2 Shri Sanjay Katoch, Manager Production has proved on record that the petitioner was present all the time during the course of enquiry alongwith Tek Chand Atri and A.K. Saran while RW3 Shri Tribhuvan Agnihotri, General Manager has proved that Shri P.D. Dhiman enquiry officer could not be served at his last known address with the company and his whereabouts are not known and that was why Shri P.D. Dhiman, Enquiry Officer could not be examined but it remains a fact that the enquiry conducted against the petitioner is fully proved on record and I find nothing wrong with the enquiry report and further the petitioner did not challenge the enquiry report in any manner whatsoever nor ever challenged the appointment of Shri P.D. Dhiman as an Enquiry Officer. Thus, having regard to entire evidence on record, I have no hesitation in coming to the conclusion that a proper, legal and fair enquiry was conducted against the petitioner and as such the petitioner is not entitled to any service benefits in any manner whatsoever and it also stands proved on record that the petitioner was on probation when the enquiry was conducted at the relevant time and that was why the petitioner was rightly discharged from service by the respondent management being on probation. Accordingly, both these issues are decided in favour of the respondent and against the petitioner.

RELIEF

As a sequel to my above discussion and findings on issues no.1 and 2, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 1st August, 2009 in the presence of parties counsels.

(Parveen)

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.

Ref no. 6 of 2000.

Instituted on 14.3.2000.

Decided on 1.8.2009.

Rajesh Kumar, S/o Shri Piar Chand R/o 1103, Sector 40-B Chandigarh. Through Mr. J.C. Bhardwaj, General Secretary, HP AITUC, Saproon, District Solan 173211 HP.

Petitioner.

Vs.

M/s Jai Mata Glass, Ltd. Barotiwala, District Solan, HP.

Respondent.

Reference under Section 10 of the Industrial disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, Ld. AR.
For respondent : Shri Rahul Mahajan, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of services of Shri Rajesh Kumar ex-excise Assistant, card no. 1549 by the management of M/s Jai Mata Glass Ltd. Barotiwala, District Solan, Himachal Pradesh w.e.f. 22.6.1998 after a prolonged spell of eight years service and on completion of 240 days continuous service without any notice, enquiry, chargesheet and without compliance of section 25F of the Industrial disputes Act, 1947 is legal and justified? If not, to what relief of consequential service benefits including reinstatement, back wages, seniority and amount of compensation, Shri Rajesh Kumar is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that he was appointed in the service of the respondent company on the designation of Assistant (Excise) on 16.7.1990 and remained in continuous employment till 22.6.1998 when his services were illegally terminated and his last drawn wages were Rs. 2219/- per month and that the services of the petitioner were continuous for the purpose of section 25B of the Act as he had completed more than 240 days in each year of his service tenure and that the sudden termination from the service without assigning any reason and justification is illegal, null, void, inoperative and nonest in the eyes of law and during the continuous spell of service, the petitioner maintained his work and conduct excellent and as such the management never served the petitioner with any explanation call, letter of warning or show cause notice and there was no stigma or allegations against the petitioner, hence he was not subjected to any charge sheet nor forced any domestic enquiry on any occasion and as such the termination of the petitioner falls in the ambit of section 200 of the Act and that the entire unhappy circumstances created by the management made the integrity of the petitioner doubtful in the eyes of one and all and that the respondent company failed to comply with the provisions of section 25N of the Act which are statutory and mandatory in nature as the management did not serve the petitioner with three months notice nor paid the wages in lieu thereof and that the petitioner has been condemned unheard by the respondent and followed the uncivilized formula of hire and fire and that the constitution of India has vested the weaker sections/working class with certain basic rights through its Articles and Directive principles and as such prayed for reinstatement in service from the date of retrenchment with full back wages, seniority and other consequential service benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner which filed reply inter alia raising preliminary objections of maintainability as the petitioner does not fall within the definition of workman as defined under section 2(s) of the Industrial Disputes Act, 1947, abandonment and having been appointed for three months only. On merits, it is contended that the petitioner was appointed on temporary basis as Assistant whose services were never regularized by any competent authority, who remained absent and did not report for his duty w.e.f. 12.6.1998 and has abandoned his job and that there has been no violation of provisions of natural justice and the provisions of law and that the petitioner was never terminated by the respondent, who left the job of his own sweet will and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 20.10.2000 on the pleadings of the parties.

1. Whether the termination of services of the petitioner is violative of section 25F of the I.D Act? If so, its effect?

OPP.

2. Whether petitioner is not a workman as alleged?

OPR.

3. Whether the petitioner abandoned the job himself? If so, its effect?

OPR.

4. Relief.

6. I have heard the Ld. AR for the petitioner and Ld. Counsel for the respondent and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1	No.
Issue no.2	No.
Issue no.3	Yes.

Relief.	Reference answered in negative per operative part of award.
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REASONS FOR FINDINGS

Issue No.1 & 3

8. Both these issues are taken up and discussed together being correlated and interconnected for sake of convenience and to avoid repetition. Coming to these issues, the petitioner has examined himself as PW-1, who has stated that on 16.7.1990, he joined respondent as an Assistant and remained with respondents till 22.6.1998. He was in personal administration and used to mark the presence of the workers. In Feb. 1991, he was transferred to excise department where he was doing the dispatch and documentation of the vehicles. No body was working under him. He was not supervising anybody. He used to submit his report to senior excise officer, who was the head of excise department. He was not recommending nor leave sanctioning authority. He was also not the appointing, supervisory or disciplinary authority. He was getting Rs. 2219/- as gross pay when he was terminated. He completed 240 days in all the years when he worked with the respondent. No notice was given to him when he was terminated. No charge sheet was given to him nor enquiry was conducted against him. He was not paid any retrenchment compensation. He did not leave the job himself. He is unemployed these days. His wife is in the job and that is how he is making his both ends meet. He may be reinstated with all benefits of pay etc.

9. To rebut the case of the petitioner, the respondent has examined four RWs in all. RW-1 Shri Sunil Verma has stated that the petitioner is having permanent provident account no. 20281/- 81 and Ex. R1 is a copy of form no. 19 under the employees Provident Funds Scheme, 1952 qua the petitioner and per Ex. R1, the petitioner had joined the Samsung Acryet Ltd. on 2.11.1998 and resigned on 30.4.2000 and Ex. R2 is a copy of the Employees Pension Scheme, 1995 qua the petitioner for the period, he was working in the aforesaid concern.

10. RW-2, Shri J.N Bakshi, Secretary and Coordinator with M/s Sigma Froudenberg Nok Pvt. Ltd, Mohali has stated that no such person by name Rajesh Kumar S/o Shri Piar Singh had ever worked in their concern and one Shri R.K Kaushal S/o Shri P.C Kaushal is working with them as Excise Officer since 3.11.2001 and Ex. R3 is an abstract of the attendance register qua Shri R.K Kaushal for the month of August, 2002 and Ex. R4 is a copy of PF return qua Shri R.K Kaushal and he has not brought the bio data submitted by Shri R.K Kaushal as the same was not summoned from him.

11. RW-4, Shri Inder Raj Kumar, Assistant Manager (Personnel) of respondent factory has stated that the petitioner was working as an Assistant in the company belonging to the respondent and was posted in the excise department and proved the appointment letter Ex. RW3/A and the petitioner was lastly getting Rs. 2219/- per month and the nature of duties being performed by the petitioner was that he was independently handling the excise matters, loading and unloading and dispatch of product. The petitioner had joined his duties, vide joining report Ex. RW3/B, who abandoned the job w.e.f. 12.6.1998, who was asked to report for duty vide letters Ex. RW3/C to RW3/E and one letter was sent through ordinary post and the remaining two under certificate of posting, copies of which are Ex. RW3/F and Ex. RW3/G and as per Attendance Card Ex. RW3/H, the petitioner did not report for duty after 11.6.1998 and as per information gathered by them, the petitioner worked with M/s Jai Beverage Pvt. Ltd., M/s Samsum Acrycot Ltd and M/s Agro Dutch Industries Ltd as is apparent from the copies of communications mark X, mark Y and Z respectively. The petitioner had served demand notice Ex. RW3/J which was replied vide reply Ex. RW3/K. The services of the petitioner were not terminated by the management and instead, he had left the job of his own. The petitioner is presently working with M/s Sigma Fred Ltd. Mohali and they had summoned witnesses to prove communications mark X,Y and Z but one of them has refused to accept the summon and summons in respect of other received unserved with the report that the factory is closed and the third witness is served.

12. RW-4, Shri Rajiv, General Manager, Agro Dutch Industries Ltd. Dera Bassi has proved the appointment letter and resignation letter of the petitioner Ex. RW4/A to Ex. RW4/C. The petitioner worked in their company from 1.8.2001 to 6.11.2001 whose salary was Rs. 7,500/- and the EPF application duly filled in is Ex. RW4/D.

13. Shri J.C Bhardwaj, Ld. AR for the petitioner has vehemently argued at the very out set that the services of the petitioner were illegally terminated by the respondent without holding any enquiry and without compliance of the Industrial Disputes Act, 1947.

14. On the contrary, Shri Rahul Mahajan, Ld. Counsel for the respondent controverted the arguments of the petitioner and has submitted that the services of the petitioner were never terminated by the respondent at any point of time, who left the job of his own without any intimation to the respondent company, hence the petitioner is not entitled to any relief as claimed by him.

15. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

16. After the close scrutiny of the record of the case, it remains a fact that the petitioner was appointed as an Assistant by the respondent company vide Ex. PW3/A, who joined his duties vide Ex. RW3/B placed on record which fact has not been disputed by both the parties. The only bone of contention between the parties is that the petitioner had abandoned the job of his own or he was terminated by the respondent management. It remains a fact that the respondent had examined Shri Sunil Verma as RW-1, who had proved the permanent provident account no. 20281/81 Ex. R1 qua the petitioner, who had also proved that the petitioner had joined the Samsung Acryot Ltd. on

1.11.1998 and the petitioner resigned the said concern on 30.4.2001 and also proved the copy of Employees Pension Scheme 1995 qua the petitioner Ex. R2 whereas according to the respondent, the petitioner had left the job w.e.f. 12.6.1998. It is also proved on record that the petitioner had also worked with M/s Agro Dutch Industries Ltd. Dera Bassi as is evident from the statement of RW4 Shri Rajeev (General Manager), who has stated that the petitioner worked in their company w.e.f. 1.8.2001 to 6.11.2001 @ Rs. 7,500/- per month, who had also proved the application for his appointment letter and registration letter Ex. RW4/A to Ex. RW4/C and EPF application Ex. RW4/D. It has also come on record that the petitioner was called by the respondent company to resume his duties vide letters Ex. RW3/C to Ex. RW3/E which clearly shows that the petitioner had failed to report for duties despite having been given written letters to him which are placed on record. No doubt, that the petitioner has tried to establish on record that his services were terminated by the respondent without holding any enquiry against him at any point of time but there is nothing on record which could go to show that the services of the petitioner were terminated by the respondent. On the other hand, the respondent has proved on record that the services of the petitioner were never terminated, who had left the job of his own as the petitioner absented himself from duty without any intimation to his superiors. It remains a fact that where a workman did not report for duty for a long time without any reason and without prior permission or intimation to the employer in such cases no enquiry is required to be held against the workman especially when it is fully proved on record that the petitioner himself is responsible for loosing his job. It is well settled by Madras High Court in 2003 LLR 852 incase titled as Management Jonas Woodhead and Sons (India) Ltd. Madras Vs. Presiding Officer, Second Addl. Labour Court, Madras in which it was held that:

“Termination of a workman for his habitual absence and not joining his duties despite letters and reminders to this effect will be legal and justified even when no enquiry has been held by the management. The High Court will not interfere in the award of the Labour Court in rejecting the dispute of the workman.

It is not incumbent on employer to wait indefinitely for the workman who fails to join his duties or sending application for leave despite repeated letters and the employer can act within his rights in removing the workman from the rolls.”

Thus, having regard to the above cited ruling and having regard to the entire evidence on record, I am of the firm opinion that the petitioner has abandoned the job of his own without any intimation to the respondent company despite having the fact that the respondent had written several letters to the petitioner to resume his duties. It is also fully proved on record that the petitioner had joined various companies after the abandonment from the respondent company, who was earning more money as compared to the respondent company which goes to show that the petitioner was not interested in this job with the respondent company on the meagre salary paid by the respondent company to the petitioner and as such I have no hesitation in coming to the conclusion that the termination of the petitioner was not violative of section 25F of the Industrial disputes Act, 1947 especially when he had left the job of his own. Accordingly, both these issues are decided in favour of the respondent and against the petitioner.

Issue No. 2.

17. In support of this issue, no evidence was led by the respondent being the legal issue. However, I have scrutinized the record of the case and after persuing the definition of workman under section 2(s) of the ID Act, 1947 which has been a subject matter of most controversy in industrial disputes. Hence, it becomes imperative to understand as to who is a workman and who is not a workman as employed by the employer. It is, however, made clear that the monthly ceiling of RS. 1600/- per month, as given in the definition, has not only become obsolete but deceptive also

and as such cannot be taken into consideration. Also the designation of the workman is no longer the criterion for determination of the status of an employee since the nature of duties are taken into consideration to ascertain whether an employee is a workman or not as held by the **Hon'ble Supreme Court in case titled as Sharad Kumar Vs. Govt. of NCT of Delhi reported in 2002 LLR 545 (SC)** in order to decide as to whether an employee, even though designated as an officer is a workman or not, the primary or substantial duties as performed by him are relevant. It is also made clear that if the main work of the employee is not manual or clerical or if little manual or clerical work which he does form only a part of his duties then such an employee cannot be deemed to be a workman. It was also held by their lordships of **Hon'ble Supreme Court in MUKAND LTD. Vs. MUKAND STAFF & OFFICERS ASSOCIATION as reported in (2004) 10 SCC 460** in which it was held that:

*“Whether the employee is workman or not, has to be determined on the basis of duties, responsibilities and powers as laid down in section 2(s), ID Act and not on the basis of his grade. Similarly in case titled as **ANAND REGIONAL COOP OIL SEEDS GROWERS UNION LTD. Vs. SHAILESH KUMAR HARSHADBHAI SHAH as reported in (2006) 6 SCC 548** in which it was held that:*

“Whether the employee worked in a supervisory capacity and was not a workman-Test not determine-Supervision-Concept of –Held, not only the nature of his work but also the terms of appointment in the job are relevant considerations.”

Thus, having regard to entire evidence on record, I am of the firm opinion that the petitioner was a workman at the relevant time under the respondent and as such he falls under section 2(s) of the Industrial Disputes Act, 1947. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 1st August, 2009 in the presence of parties counsels.

(Parveen)

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.

Ref no. 48 of 2005.
Instituted on 2.6.2005.
Decided on. 3.8.2009.

1. Bhagat Ram s/o Shri Deep Ram R/o Village Salach, P.O Kotlan Bang via Oachghat, Tehsil Rajgarh, District Sirmour, HP.
2. Maya Ram S/o Bahadur Singh R/o Village Karchi, P.O Darabla via Oachghat, Tehsil Rajgarh, District Sirmour, HP.

Petitioners.

Vs.

The Executive Engineer, HPSEB Division Rajgarh, District Sirmour, HP.

Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri R.K Khidta, Ld. Csl.
For respondent : Ms. Sharmila Patial, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:-

“Whether the termination of services of Shri Bhagat Ram s/o Shri Deep Ram and Maya Ram S/o Bahadur Singh workmen by the Executive Engineer, HPSEB Division Rajgarh, District Sirmour, HP w.e.f. 15.12.1993 and 15.3.94 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workmen are entitled to?”

2. The petitioners have filed two statements of claim. Petitioner Bhagat Ram has filed a separate claim asserting therein that he was engaged as beldar by the respondent in the month of August, 1988 and worked as such till July, 1995 without any break and that the petitioner had completed 240 days in a calendar year and the services of the petitioner were orally terminated by the respondent in August, 1995 without assigning any reason and without complying the mandatory provisions of Industrial Disputes Act, 1947 as well as the provisions of standing orders which is binding upon the respondent as no ten days notice was given to the petitioner before his termination and that the petitioner after his termination, visited the office of the respondent for his reengagement and also gave in writing but to no avail and that the respondent has engaged new persons and the petitioner has not been reengaged by the respondent which is clear violation of section 25H of the Industrial Disputes Act, 1947 and that the petitioner has every right to continue in job till the date of superannuation and the termination of the petitioner tantamounts to unfair labour practice of which the petitioner is victim and the action of the respondent is against the provisions of Industrial Disputes Act and that the petitioner is a workman as defined under the Industrial Disputes Act, who had completed 240 days in preceding calendar year preceding his termination and as such the respondent is duty bound to follow the provisions of the Industrial Disputes Act and that the oral termination order passed by the respondent is totally illegal, unjust and arbitrary which deserves to be set aside and quashed and as such prayed for reinstatement in service w.e.f. 15.12.1993 alongwith all consequential benefits.

3. Petitioner Maya Ram has filed a separate claim asserting therein that he was engaged as beldar by the respondent in the month of August, 1988 and worked as such till July, 1995 without any break and supported the entire claim of the petitioner Shri Bhagat Ram, hence these claims.

4. The respondent resisted and contested the claims of the petitioners, which filed reply inter alia raising preliminary objections of having no enforceable cause of action and that no legal or vested rights of the petitioners have been infringed or violated, barred by estoppel and also barred by delay and laches. On merits, it is contended that petitioner Bhagat Ram was engaged on daily wages basis w.e.f. 16.2.1989 and worked upto 15.12.1993 and petitioner Maya Ram was engaged on daily wages w.e.f. 3.11.1992 and worked upto 15.3.1994 in different spells by the respondent, who were quite casual for attending their duties and they left the job of their own, who never completed 240 days in any calendar year and as such no notice is required to be served in view of the standing orders Act and Industrial Disputes Act, 1947 and that the petitioners have never completed 240 days in any calendar year nor their services have been terminated by the respondent, who have left the job of their own, hence there was no necessity to comply with the provision of sections 25G and 25H of the Industrial Disputes Act, 1947 and as such prayed for dismissal of the claims.

5. In the rejoinder, the petitioners controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petitions.

The following issues were framed by this Court on 27.10.2005 on the pleadings of the parties:

1. Whether the service of Shri Bhagat Ram and shri Maya Ram were illegally terminated by Executive Engineer, Rajgarh w.e.f. 15.12.1993 and 15.3.1994 without complying the provisions of I.D Act, 1947 is improper and unjustified? If so, its effect?
OPP.
2. If issue no.1 is proved in affirmative, whether the petitioners are entitled for relief claimed?
OPP.
3. Whether the petitioners are having no locus standi to file the present petition and is not maintainable?
OPR.
4. Whether the petitioners are stopped from filing the claim petition due to their own acts, conduct and deed?
OPR.
5. Relief.
6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.
7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1.

Yes.

Issue no. 2.	Entitled for reinstatement in service with seniority and continuity but without back wages.
Issue no.3.	No.
Issue no.4	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No.1.

7. Coming to this issue, the petitioners have examined five PWs in all. PW1 Shri Babu Ram has stated that he knows the petitioners. He was working as special foreman and retired as such in November, 1996 and was working in Chandol section from 1987 till his retirement. The petitioners worked under him w.e.f 1988 till 1995 continuously and they were retrenched by the department in 1995, who had not left the job of their own.

8. PW2 Shri Ayodhya Kumar has stated that he is working as Lineman in Dhamandar section, who was working as lineman in Chandol section w.e.f. 1986 to 1996 and the petitioners were also working there, who worked from 1988 to 1995 and then they were disengaged and the petitioners used to come in the office for their reengagement and the work is still available with the department. The petitioners had not left the job of their own.

9. PW3 Er. K.S Banial, SDO Rajgarh has stated that the petitioner Bhagat Ram was engaged in Feb. 1989 and Maya Ram was engaged in December, 1989 and proved the mandays chart of the petitioners Ex. RA and Ex. RB. No notice nor compensation was paid to the petitioners as they had left the job of their own and no letter was issued to the petitioner asking them to resume their duties. He could not state whether new persons were engaged after 1990 to 1995 and he has not brought the detail of the persons, if any engaged after 1988.

10. Petitioner Maya Ram stepped into witness box as PW4, who has stated that he was engaged as daily wages beldar in August, 1988 with the respondent and continued as such till 1995 and then he was terminated from service without serving any notice and without payment of compensation, who had completed more than 240 working days in a calendar year preceding his termination. He also made representations Ex. PA to Ex. PC to the respondent and then he sent demand notice Ex. PD. The work is still available with the respondent and there are more than 500 workmen working in Rajgarh Division.

11. Petitioner Bhagat Ram appeared into the dock as PW5, who has stated that he was engaged as daily wages beldar in August, 1988 with the respondent and continued as such till July, 1995 and then he was terminated from service without serving any notice and without payment of compensation, who had completed more than 240 working days in a calendar year preceding his termination and his junior Shri Mohan Lal is still working with the respondent. He also made representations Ex. PA to Ex. PC to the respondent and then he sent demand notice Ex. PD. The work is still available with the respondent and there are more than 500 workmen working in Rajgarh Division.

12. To rebut the case of the petitioner, the respondent has examined RW-1 Er. Karam Singh, who has stated that he has been posted as an Assistant Engineer, HPSEB Division Rajgarh since 27.4.2007 and is well conversant with the facts of the case. The petitioner Bhagat Ram was engaged on 16.2.1989 as daily wages beldar, who continued as such till 15.12.1993. Maya Ram petitioner was engaged from 1.12.1989 to 15.3.1994 with the respondent and then the petitioners

abandoned the job of their own, who were never terminated by the respondent and the petitioners have not completed 240 working days in any calendar year preceding their termination. No junior to the petitioners were engaged by the respondent and the claim of the petitioners is false.

13. The case of the petitioners is that they being the daily wages beldar having worked for more than 240 days in each calendar year preceding their termination and their termination without notice and compensation is illegal and even juniors to them are still working with the respondent and as such they are also entitled for reinstatement in service with all consequential benefits.

14. On the contrary, the respondent contends that the petitioners were not terminated from service, who left the job of their own without any intimation to the respondent and no junior to the petitioners is working with the department, hence the petitioners are not entitled to any relief claimed by them.

15. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

16. After the close scrutiny of the record of the case, the petitioners have failed to prove on record that they had put in more than 240 working days in twelve calendar year preceding their termination as is evident from the mandays chart Ex. RA & RB placed on record which clearly shows that the petitioner have not completed 240 working days in twelve calendar months with the respondent preceding their termination, hence the case of the petitioners does not fall under section 25F of the Industrial disputes act, 1947. Apart from it, the respondent has tried to establish on record that the petitioners have abandoned the job of his own but there is nothing on record which could show that the petitioners themselves are responsible for loosing their job especially when the petitioners have proved on record by examining PW1 Shri Babu Ram, retired foreman and PW2 Shri Ayodhya Ram Lineman of the respondent board, who have categorically stated that the petitioners have not left the job of their own, whose services were disengaged by the respondent, hence I find no force in this contention. Moreover, it was held by our own Hon'ble High Court incase titled as *State of HP & Others Vs. Bhatag Ram & Another as reported in latest HLJ 2007 (HP) 903* in which it was held that:-

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

17. Now, advertng to the other aspect of the case, it is clear that the petitioners were engaged by the respondent as beldar, who worked with the respondent till 1993 and 1994 respectively. Apart from it, the petitioners have proved on record that junior to them Shri Mohan Lal is still working with the respondent. It is significant to note that the respondent is silent on the point of engaging juniors and still working with the respondent. It is well settled that where one party alleges something which is not controverted by the other party in cross-examination, it is deemed to have been admitted by the other party. Moreover, the contention of the petitioner that the junior Shri Mohan Lal is still continuing with the respondent remained unchallenged as this allegation was not refuted by the respondent and as such the adverse inference is to be drawn against the respondent. The petitioners have categorically stated that junior to them Mohan Lal is still working with the respondent which is not refuted by the respondent in the cross examination and therefore, it is proved on record that Shri Mohan Lal junior to the petitioners is still continuing and thus there is breach of section 25G & 25H of the Industrial Disputes Act, 1947. It is significant to note that it was the duty of the respondent to produce entire record of the workmen pertaining to petitioners and other workmen working under the respondent in order to rebut that Shri Mohan Lal is not the junior to the petitioner or in other words that no person named Mohan Lal is working with the respondent. In the instant case, the respondent has failed to discharge its burden for the

reasons best known to it by concealing the true facts from this Court on the point of juniors. Here I am fortified with a view taken by their lordships of *Hon'ble Supreme Court incase titled as State of Haryana Vs. Dilbag Singh reported in 2007 LLR 72 SC* in which it was held that :

“Where Labour found that person junior to respondent was still working and thus there was breach of section 25-G & 25-H of the Act. Court directed reinstatement with 50% back wages.”

Similarly, our own Hon'ble High Court of HP has held incase titled as *State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903.* in which it was held that:-

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

Thus, having regard to the above cited rulings and having regard to the entire evidence on record and inview of the fact that Shri Mohan Lal junior to the petitioners is still working with the respondent which is not disputed by the respondent department having not been cross-examined on the point of the junior still continuing with the respondent and obviously therefore, I have no hesitation in coming to the conclusion that Shri Mohan Lal, junior to petitioner is still working with the respondent and as such the termination of services of S/Shri Bhagat Ram and Maya Ram petitioners by the Executive Engineer, HPSEB Rajgarh w.e.f. 15.12.1993 and 15.3.1994 respectively without complying the provisions of Industrial Disputes Act, 1947 is improper and unjustified as the respondent has violated the principle of first come last go and also violated the provisions of sections 25G & H of the Industrial Disputes Act, 1947. Accordingly, issue no.1 is decided in favour of petitioners and against the respondent.

Issue No. 2

18. Since I have held under issue no.1 above that the services of the petitioners have been illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947, hence the petitioners are held entitled to their reinstatement in service alongwith seniority and continuity from the date of their illegal termination. However, the petitioners are not entitled to back wages as they have not placed any material on record to substantiate that they were not gainfully employed after their termination. Accordingly, issue no.2 is decided against the respondent and in favour of the petitioner.

Issue No. 3

19. In support of this issue, no evidence was led by the respondent being the legal issue. Since the services of petitioners have been illegally terminated by the respondent, hence the petitioners being aggrieved have locus standi to file the petition and I find nothing wrong with the petition which is perfectly maintainable. Accordingly, issue no.3 is decided in favour of petitioners and against the respondent.

Issue No. 4

20. In support of this issue, no evidence was led by the respondent not it was pointed out during the course of arguments as to how the petitioners are estopped from filing the claim petition by their own acts, conduct and deed. Accordingly, issue no.4 is decided in favour of petitioners and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issue no.1 to 4, the claim of the petitioners succeeds and is hereby allowed and the petitioners are ordered to be reinstated in service forthwith with seniority and continuity from the date of their illegal termination. However the petitioners are not entitled to back wages as they have not placed any material on record to substantiate that they were not gainfully employed after their termination. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 3rd August, 2009 in the presence of parties counsels.

(Parveen)

J.S MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.

Ref no. 24 of 2005.
Instituted on 15.02.2005.
Decided on. 4.8.2009.

Deepa Ram S/o Shri Sabla Ram R/o V&PO Tatiana, Sub Tehsil Kamrao, District Sirmour, HP.

Petitioner.

Vs.

The Executive Engineer, HPPWD Division Shillai, District Sirmour, HP.

Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Yash W.Chauhan, Ld. Csl.
For respondent : Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:-

“Whether the termination of services of Shri Deepa Ram S/o Shri Sabla Ram ex daily wages beldar by the Executive Engineer, HPPWD Division Shillai District Sirmour, HP

w.e.f. June, 1990 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, Shri Deepa Ram is entitled to?"

2. The petitioner has filed a claim asserting therein that the petitioner was engaged as beldar by HPPWD Shillai Division, District Sirmour in the year 1984 on daily wages and the petitioner had completed more than 240 days in the calendar year and worked to the entire satisfaction of his superiors and the services of the petitioner were terminated in the year 1990 without following the principle of natural justice and that the respondent dispensed with the services of the petitioner without following the provisions as laid down by law. The petitioner had been in continuous service under the respondent as per the provisions of section 25B and that while dispensing with the services of the petitioner, the respondent did not issue any notice nor paid any retrenchment compensation to the petitioner. The respondent also violated the provisions of section 25H of the Industrial Disputes Act, 1947 after the disengagement of the petitioner by engaging fresh hands into the employment and as such prayed for reinstatement in service alongwith all consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability and that the petitioner has wrongly invoked the jurisdiction of this Court without giving true position of the case as well as without exhausting the statutory remedies available to him for the redressal of his grievances as the petitioner earlier raised the dispute in the year 2001 before the Labour-cum-Conciliation Officer, Nahan which was rejected by the Labour Commissioner vide order dated 24.2.2003 and the petition is hopelessly time barred and also barred by estoppel as the petitioner was engaged by the respondent department during the year 1984 as beldar, who worked for 20 days in 1984, 56 days in 1985, 200 days in 1989 and 118 days in 1990 and then left the job twice in the year 1985 and 1990 of his own and the abandonment of job by the workman of his own is not retrenchment within the meaning of section 200 of the Industrial Disputes Act. On merits, it is contended that the petitioner himself left the job of his own, hence there is no violation of Industrial Disputes Act and that the services of the petitioner were never terminated by the respondent, who left the job of his own and as such the petitioner is not entitled to any compensation under section 25F of the Industrial Disputes Act, 1947 and as such prayed for dismissal of the claim.

4. Rejoinder not filed. The following issues were framed by this Court on 29.5.2006 on the pleadings of the parties:

1. Whether the service of the petitioner has been illegally terminated by the respondent without complying the provisions of I.D Act, 1947?
OPP.
2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to?
OPP.
3. Whether the petition in the present form is not maintainable?
OPR.
4. Whether the petition is barred by limitation?
OPR.
5. Relief.

5. I have heard the Ld. Counsel for the petitioner and Ld. DDA for respondent and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1.	Yes.
Issue no. 2.	Entitled for reinstatement in service with seniority and continuity but without back wages.
Issue no.3.	No.
Issue no.4	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1

7. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged as beldar with HPPWD Shillai Division, District, Sirmour in the year 1984 on daily wages and worked till 1990, who had worked for more than 240 days in a calendar year to the entire satisfaction of his superiors whose services have been terminated in the year 1990 without any reason. No notice nor retrenchment compensation has been paid to him and many juniors and fresh hands were also engaged after his retrenchment and he was assured by the department for his reengagement, who visited the office of the respondent number of times but to no avail and in the year 2001, he raised the demand notice before Labour-cum-Conciliation Officer, Solan which was rejected by Labour-cum-Conciliation Officer and then he approached the Hon'ble High Court against the rejection of the demand notice by Labour Commissioner which was allowed by the Hon'ble High Court. His services were illegally terminated by the department without following the provisions of I.D. Act 1947 and as such prayed for reinstatement with full back wages and seniority.

8. To rebut the case of the petitioner, the respondent has examined RW-1 Er. N.K Gupta, who has stated that he has been posted as SDO at Kamraoo since November, 2004 and is well conversant with the facts of the case. The petitioner was engaged as beldar in December, 1984, who had worked for 20 days in 1984, 56 days in 1985, 200 days in 1989 and 118 days in 1990 and proved the mandays chart Ex. RA and the petitioner left the job in 1990 and then the petitioner never reported for duties. The petitioner filed the case in 2001 before Labour Commissioner which was dismissed in 2002, who again filed the case in 2005, who had not worked for 240 days in any calendar year as per detail given in mandays chart Ex. RA. No notice has been given to the petitioner as he left the job of his own.

9. The case of the petitioner is that he being the daily wages beldar having worked for more than 240 days in each calendar year preceding his termination and his termination without notice and compensation is illegal and even juniors to him are still working with the respondent department and as such he is also entitled for reinstatement in service with all consequential benefits.

10. On the contrary, the respondent contends that the petitioner was not terminated from service, who left the job of his own without any intimation to the department and no junior to the petitioner is working with the department, hence the petitioner is not entitled to any relief.

11. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it stands proved on record from mandays chart Ex. RA that the petitioner had worked for more than 240 days in twelve calendar months after calculating the working days from June 1990 to July 1989 which comes to 271 days from the date of termination as held placed on record and no notice nor any compensation as prescribed under section 25F of the Industrial Disputes Act, 1947 was paid to the petitioner at any point of time which fact has also been admitted by RW1 Er. N.K. Gupta that no notice nor compensation was paid to the petitioner. Apart from it, the respondent has tried to establish on record that the petitioner has abandoned the job of his own but there is nothing on record which could show that the petitioner himself is responsible for loosing his job. I find no force in this contention as it was held by our own Hon'ble High Court incase titled as **State of HP & Others Vs. Bhatag Ram & Another as reported in latest HLJ 2007 (HP) 903** that:

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

13. Now, advertng to the other aspect of the case, it stands proved on record that the petitioner has worked for 271 working days in twelve calendar months preceding his termination which fact is clear from the mandays chart Ex. RA that the petitioner had worked for 118 days w.e.f. 2/1990 to 6/1990 and 153 days w.e.f. 7/1989 to 11/1989 and if we calculate the total working in twelve calendar months it comes to 271 days and as such it is clear that the petitioner had completed 240 working days in twelve calendar months preceding his termination.

Section 25-F of the ‘Act’ says that:

25-F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)

14. After the close scrutiny of section 25-F, it is clear that termination of services of the petitioner, who has worked for more than 240 days in a calendar twelve months preceding his termination as is evident from mandays chart Ex. RA placed on record and his termination without notice under section 25-F and payment of compensation is illegal and as such, the termination amounts to illegal retrenchment contravening the provisions of section 25-F of the I.D Act, 1947. Moreover, it is well settled by **our own Hon'ble High Court incase titled as State of Himachal Pradesh Vs. Sohan Lal reported in latest HLJ 2007 (HP) 776** in which it was held that :

“Industrial Disputes Act, 1947, Section 25F. Counting of 240 days for compliance of section 25F. 240 days has to be calculated preceding the date of retrenchment during 12 calendar months and not a year. Retrenchment was void ab-initio for non compliance with the mandatory provisions of section 25F.”

15. Thus, having regard to the above cited rulings and having regard to the entire evidence on record, I have no hesitation in coming to the conclusion that the services of the petitioner were illegally terminated by the respondent department without following the provisions of Industrial Disputes Act, 1947 especially when the petitioner has proved on record that he had completed 271 working days in twelve calendar months preceding his termination. Accordingly, issue no.1 is decided in favour of the petitioner and against the respondent.

Issue no. 2

16. Since I have held under issue no.1 above that the services of the petitioner have been illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947, hence the petitioner is held entitled to reinstatement in service alongwith seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondent.

Issue no.3.

17. In support of this issue, no evidence was led by the respondent being the legal issue. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

Issue no.4.

18. In support of this issue, no evidence was led by the respondent being the legal issue. However, I have scrutinized the record of the case and observed that there is no limitation under the I.D Act as it was held by their lordship of **Hon'ble Supreme Court as reported in (1999) 6 SCC 82 case titled as Ajayab singh Vs. Sirhind Co-operative Marketing –cum- Processing Service Society Limited and Another** in which it was held that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Thus, on the strength of this ruling, it can safely be concluded that this petition does not suffer from delay and latches. Accordingly, issue no.4 is decided in favour of the petitioners and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issue no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 4th August 2009 in the presence of parties counsels.

(Parveen)

J.S MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.

Ref no. 26 of 2003.
Instituted on 4.2.2003.
Decided on. 4.8.2009.

Rakesh Abrol S/o Shri Roshan Lal Abrol R/o Village Harkukar, P.O Ghumarwin, Distt. Bilaspur, HP.

Petitioner.

Vs.

The Managing Director, Agro Industrial Packaging India Ltd. Nigam Vihar, Shimla-2, HP.

Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Kulbhushan Khujaria, Ld. Csl.

For respondent: Ms. Smita Thakur, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:-

“Whether the action of the Management of M/s Agro Industrial Packaging India Limited, Nigam Vihar, Shimla-2 to not allow Shri Rakesh Abrol s/o Shri Roshan Lal Abrol(daily wages clerk) to resume his duties w.e.f. 17.10.1996 even on production of medical certificate is legal and justified? If not legal, then what relief and service benefits Shri Rakesh Abrol is entitled to?”

2. The petitioner has filed a claim asserting therein that the petitioner was working as clerk on daily wages basis with the respondent and his services were engaged vide letter dated 6.11.1993 which were extended vide letters dated 8.2.1994, 18.5.94, 19.8.94, 19.11.94, 7.3.95, 6.6.95, 11.9.95, 14.12.95, 22.3.96, 29.6.96 and 28.9.96 and that the petitioner fell ill and for the purpose of treatment, the petitioner left on 22.10.96, who was treated in Government Hospital as well Private Hospital Parwanoo and that the medical certificates w.e.f. 22.10.1996 to 6.2.1997 were submitted

to the plant Manager and other medical certificates were submitted at Head Office and that the petitioner submitted his joining report on 3.11.1998, who was asked to submit his joining report at Head office and on the instructions, the petitioner submitted his joining report on 6.11.1998 in Head office but the petitioner was not allowed to mark his presence and that the petitioner was assured by the authorities that his services would be reengaged but no action was taken up by the respondent and that the petitioner had worked for more than 240 days in twelve calendar months and when he fell ill, informed the official regarding the illness and after recouping his health, the petitioner submitted his joining but he was not allowed to join his duties and even junior is still working with the respondent which is totally against the provisions of Industrial Disputes Act, 1947 and that no notice as required under the Act was served upon the petitioner and no opportunity was granted to the petitioner to explain his position and as such prayed for reinstatement and regularization, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia contending that the petitioner was initially engaged on daily wages as clerk on temporary basis vide order dated 16.11.1993 for the period of 89 days and the service period of the petitioner was extended from time to time and his last service contract was renewed for further period of 89 days on 28.9.1996, who reported for duty on 9.10.1996 in response to order dated 28.9.1996 and the petitioner by working for two days had proceeded on compensatory leave after 10.10.96 without getting his leave sanctioned and remained absent. It is denied that the petitioner left the job on 22.10.1996 but he left the job on 10.10.1996 and the medical certificate was submitted by the petitioner with the respondent on 24.2.97 when he was not in the employment of the respondent as the service period of the petitioner was completed on 5.1.1997. It is also contended that the petitioner was wilfully absenting from duty after 10.10.1996 vide which he was asked to report for duty but the petitioner failed to report for duty and then sent reply on 15.11.1996 by submitting that he may be allowed medical leave after 20.10.1996 and the petitioner submitted medical certificate w.e.f. 20.10.96 to 17.2.97 of his illness on 24.2.1997 with a request that he was in need of money for further treatment which may be adjusted against his leave due on account of earned leave, over time and medical leave and that the medical certificate submitted by the petitioner was for the period from 20.10.96 to 17.2.97 which does not seem to be genuine for the reasons that the petitioner was registered as OPD patient vide OPD no. 47507 dated 23.10.96 whereas the certificate was issued from 20.10.96 to 17.2.97 and there is no such endorsement made in the certificate by the Doctor for giving fitness to the petitioner for resuming duties and as such the genuineness of the medical certificate cannot be taken into consideration, hence the claim of the petitioner is liable to be rejected. It is also contended that the petitioner has left the job of his own after 18.10.1996 and the medical certificate was submitted in the month of Feb. 1997 on which period, the petitioner was not on the roll of the respondent and the other medical certificate was submitted for the period w.e.f. 11.10.98 to 11.1.99. It is denied that the petitioner submitted his joining report on 3.11.98, who left the job on 18.10.96 and did not report for duty and that no assurance was given to the petitioner for his reengagement and that the petitioner concealed the material facts, who is making concocted story by mentioning his illness and that the question of issuance of notice to the petitioner under the provisions of Industrial Disputes Act does not arise at all as the petitioner left the services of his own after 18.10.1996 and as such prayed for dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 23.8.2005 on the pleadings of the parties:

1. Whether the action of the respondent not to allow the petitioner to resume his duties w.e.f. 17.10.1996 even on production of medical certificate is legal and justified?

OPR.

2. If issue no.1 is not proved, to what relief of service benefits, the petitioner is entitled to?
OPP.
3. Whether the petitioner left the job of his own as alleged?
OPR.
4. Relief.
6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.
7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1.	No.
Issue no. 2.	Entitled for reinstatement in service with seniority and continuity but without back wages.
Issue no.3.	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No.1 & 3

8. Both these issues are taken up and discussed together being co-related and interconnected for sake of convenience and to avoid repetition. Coming to these issues, the respondent has examined RW1 Shri Ajay Chadha, who has stated that he is posted as Plant Manager since March, 2000 and is well conversant with the facts of the case. The petitioner was daily paid clerk with their department from 6.11.93 to 28.9.96, who left the job on 10.9.96 and proceeded on leave and then the petitioner never reported for duties and they had issued letter Ex. RA to the petitioner for his wilful absence which was replied by the petitioner vide Ex. RB and requested to grant him leave till 20.10.96 on medical grounds. The petitioner submitted his medical certificate Ex. RE on 24.2.1997. The petitioner was engaged for 89 days only which period was over on 8.1.97. As the petitioner was not on the roll, hence his medical certificate has not been considered and the petitioner applied for the grant of leave due which was sanctioned and he was paid dues for 41 days as per record.

9. To prove the case, the petitioner stepped into witness box as PW1, who has stated that he was engaged as daily wage clerk on 6.11.1993 and continued as such till 22.10.1996 and then he fell ill and could not attend the office for two years due to his illness, who made an application to the respondent alongwith medical certificate and then he resumed his duties on 3.11.1998 where he was directed to report to the Head Office. He reported at head Office on 6.11.1998 where he worked for a month and then he was asked to go home and they would inform him in writing to resume his duties but he did not receive any letter from the respondent and his services were terminated by the respondent without notice and without compensation, who had worked for more than 240 working days in every calendar year preceding his termination and his medical certificate Ex. RC is already on record and as such prayed for reinstatement in service alongwith seniority and continuity including back wages .

10. The case of the petitioner is that he being the daily wages clerk having worked for more than 240 days in each calendar year and he fell ill and could not attend the office due to his illness and after recovery, he submitted his joining report to the respondent but he was not allowed to resume his duties, who was illegally terminated from service without notice and compensation and even juniors to him are still working with the respondent department and as such he is liable to be reinstated in service with all consequential benefits.

11. On the contrary, the respondent contends that the petitioner was not terminated from service, who left the job of his own without any intimation to the department. Moreover, the petitioner was engaged on contract basis for a period of 89 days which was extended from time to time, hence the petitioner is not entitled to any service benefits as claimed by him.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged by the respondent as daily wages clerk, who worked with the respondent w.e.f. 6.11.1993 to October, 1996 and completed 45 days in 1993, 313 days in 1994, 322 days in 1995 and 260 days in 1996 as is evident from the mandays chart Ex. RD placed on record. No doubt, the respondent tried to establish on record that the petitioner tried to justify his leave on account of his sickness which is not proved on record. For sake of arguments, even if the contention of the respondent that the petitioner was not sick at the relevant time who applied for leave on medical grounds just to justify his absence is believed even then it is clear that the respondent has not conducted any domestic enquiry in order to find out that the petitioner had applied for fake leave on medical grounds or in other words that the petitioner was not suffering from any ailment at the relevant time, who only applied for the leave just to justify his absence from duties on sufficient grounds. It is well settled in 2001 LLR 55 S.C incase titled as M/s Scooters India Ltd. Vs. M. Mohd. Yaqub in which it was held that :

“Even when a workman fails to report for duty. The management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls. Even when the workman remained absent failed to report for duty. It was imperative to follow the principles of natural justice by giving the opportunity. In the instant case, the Labour Court has categorically held that the workman had not been allowed to resume his duty. There is violation of the principles of natural justice.”

14. Now, adverting to the other aspect of the case, it is clear that the petitioner has completed more than 240 working days and his termination without notice or retrenchment compensation is illegal. Here I am fortified with a view taken by their lordships of Hon’ble Supreme Court as reported in Haryana State Electronics Development Corporation Limited Vs MAMNI as reported in (2006) 9 SCC 434. that appointment for a short period (89 days) and termination of services at the end of the said period and reappointment after a gap of one day, such action of termination and reappointment repeated again and again for a period of about one year and a half year, in such circumstances, the Hon’ble Supreme Court has held the termination not bonafide but adopted to defeat the object of the Act. Thus, it is not covered by section 2(oo) (bb) of the Industrial Disputes Act, 1947. Their lordships of the Hon’ble Supreme Court has held as under:-

“Section 2(oo) (bb) of the Industrial Disputes Act reads as under:

“2. (oo) (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its

expiry of such contract being terminated under a stipulation in that behalf contained therein.”

“...It is not possible for us to accept the aforesaid plea raised at the hands of the management on account of the fact that the factual position, which has not been disputed, reveals that the respondent workman was repeatedly working on 89 days basis. It is, therefore, clear that the intention of the management was not to engage the respondent workman for a specified period, as alleged, but was to defeat the rights available to her under section 25-F of the Act. The aforesaid practice at the hands of the petitioner management to employ the workman repeatedly after notional break clearly falls within the ambit and scope of unfair labour practice.”

Similarly our own Hon'ble High Court in case Shri Manoj Kumar sharma Vs. HRTC & Another in CWP No. 39 of 06 dated 28.5.2007 has held that :

“The intention of the management was not to engage the respondent workman for a specified period was to defeat the rights of a workman under section 25-F of the Act as in that case also the petitioner was initially appointed for 89 days and after giving him fictional breaks, reappointed for another 89 days followed by one year appointment.”

Thus, having regard to the entire evidence on record, it can safely be concluded that the case of the petitioner squarely falls under section 25F of the Industrial Disputes Act, 1947 having put in more than 240 working days in twelve calendar months preceding his termination and even the termination without notice, compensation and without conducting any domestic enquiry is illegal, improper and unjustified and as such cannot be sustainable in the eyes of law. There is no evidence on record to show that the petitioner has abandoned the job of his own and rather the petitioner has proved on record that he visited the respondent from time to time for his reengagement and also applied for his medical leave but he was not allowed to join his duties and obviously therefore, it can safely be concluded that the petitioner had not abandoned the job of his own. Accordingly, both these issues are decided in favour of the petitioner and against the respondent.

Issue no.2

15. Since I have held under issues no.1 & 3 above that the action of the respondent not to allow the petitioner to resume his duties w.e.f. 17.10.1996 on production of medical certificate is not legal and justified, hence the petitioner is held entitled to reinstatement in service alongwith seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided against the respondent and in favour of the petitioner.

RELIEF

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service from the date of his illegal retrenchment forthwith with seniority and continuity. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 4th August, 2009 in the presence of parties counsels.

(Parveen)

J.S MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.

Ref no. 111 of 2006.
Instituted on 3.8.2006.
Decided on. 4.8.2009.

Netar Singh S/o Shri Mast Ram R/o Village Kanda, P.O Blendi, Tehsil Karsog, District Mandi, HP.

Petitioner.

Vs.

The Commissioner, Municipal Corporation, The Mall Shimla 171001

Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Tek Chand Sharma, Ld. Csl.

For respondent : Shri Sandeep Dutta, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:-

“Whether the termination of services of Shri Netar Singh S/o Shri Mast Ram workman by the Commissioner, Municipal Corporation, The Mall Shimla-1 HP w.e.f. 21.11.99 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. The petitioner has filed a claim asserting therein that he was engaged as beldar by the respondent corporation on 23.12.1998 and remained on duty from 23.12.1998 to 20.7.1999 at Jakhu Ward and then from 25.7.1999 to 18.11.1999 at Dhalli Ward and had completed 240 days in a calendar year and the services of the petitioner were orally terminated by the respondent on 18.11.1999 against the mandatory provisions of law as contained in the Industrial Disputes Act and the corporation has retained the junior Shri Ramesh and as such violated the principle of first come last go and the petitioner is very poor belonging to IRDP family, who has no other source of income except earning from day to day work and as such prayed that oral termination dated 18.11.1999 be declared to be illegal and wrong and be given back wages w.e.f. 18.11.1999 and all other service benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability, having suppressed material facts from this Court and having no cause of action against the respondent. On merits, it is contended that the petitioner was engaged as daily wages beldar on 23.12.1998 at Jakhoo ward and Dhalli ward. It is admitted that the petitioner had completed 240 days in a calendar year. It is denied that the services of the petitioner were terminated by the respondent, who left the job of his own and absented himself from the work and as such the petitioner is not entitled to any relief, hence prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 5.6.2007 on the pleadings of the parties:

1. Whether the services of the petitioner were terminated without complying with the provisions of Industrial disputes Act, 1947? If so, its effect?

OPP.

2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to?

OPP.

3. Whether the petition is not maintainable as the petitioner has no cause of action?

OPR.

4. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1.	Yes.
Issue no. 2.	Entitled for reinstatement in service with seniority and continuity but without back wages.
Issue no.3.	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No.1

8. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged as daily wages beldar on 23.12.1998 where he continued as such till 20.7.1999 at Jakhu Ward, Shimla and then he was reengaged from 25.7.1999 to 18.11.1999 at Dhalli ward, who had completed 240 working days in a calendar year preceding his termination, who was terminated from service on 18.11.1999 without any notice and without compensation and as such prayed for reinstatement in service with all consequential benefits. His junior Shri Ramesh Kumar is still continuing with the respondent. He had made written request for his reengagement but to no avail.

9. To rebut the case of the petitioner, the respondent has examined RW-1 Er. Rakesh Verma, Junior Engineer (B&R) in M.C Shimla, who has stated that he has been posted as Junior Engineer, (B&R) with the respondent corporation since June, 2006 and is well conversant with the facts of the case. The petitioner was engaged as beldar on daily wages on 21.12.1998 and worked as such till 20.11.1999, who had worked for 304 days w.e.f. 21.12.1998 to 20.11.1999 and then the petitioner abandoned the job of his own, who was never terminated by the respondent and the petitioner did not serve any notice to the respondent before raising an Industrial Dispute and as such the claim of the petitioner is false and is not entitled to reinstatement alongwith consequential benefits.

10. The case of the petitioner is that he being the daily wages beldar was illegally terminated from service after completing more than 240 working days in a calendar year preceding his termination without notice and compensation which is illegal and even junior to the him is still working with the respondent corporation and as such he is also entitled for reinstatement in service with all consequential benefits.

11. On the contrary, the respondent contends that the petitioner was not terminated from service, who left the job of his own without any intimation to the respondent corporation, hence the petitioner is not entitled to any relief.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner had worked with the respondent corporation as daily wages beldar w.e.f. 21.12.1998 to 20.11.1999 and has completed 304 working days in twelve calendar months preceding his termination as is evident from the deposition of RW1 Er. Rakesh Verma. No doubt, that the respondent has tried to establish on record that the petitioner had abandoned the job of his own but they had failed to prove on record that the petitioner himself is responsible for loosing his job. There is nothing on record which could go to show that the petitioner had left the job of his own as no letter nor any other document regarding the abandonment of the petitioner has been placed on record by the respondent in order to show that the petitioner has abandoned the job of his own. Moreover, it is well settled incase titled as **State of HP & Others Vs. Bhagat Ram & Another as reported in latest HLJ 2007 (HP) 903** in which it was held that:-

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

14. Thus, having regard to no evidence on the point of abandonment, it can safely be concluded that the petitioner has not left the job of his own, who was orally terminated from service by the respondent without complying with the provisions of Industrial Disputes Act, 1947.

15. Now, turning to the legal aspect of the case, it is clear that the petitioner was engaged by the respondent corporation as beldar, who worked with the respondent till 20.11.1999 having completed 304 working days in twelve calendar months preceding his termination as admitted by RW-1 Er. Rakesh Verma and it is also clear that the respondent has failed to serve notice to the petitioner nor paid compensation in lieu thereof under section 25N of the Industrial Disputes Act, 1947 which is utter disregard to the provisions of the Industrial disputes Act, 1947 as none of the conditions precedent under section 25N of the Industrial Disputes Act, 1947 was followed by the respondent and as such the termination of the petitioner is held illegal being violative of section 25N of the Industrial Disputes Act, 1947. Apart from it, the petitioner has proved on record that his junior Shri Ramesh Kumar is still working with the respondent corporation. It is significant to note

that the it is also admitted by RW1 Er. Ramesh Verma that juniors to the petitioner are still working with the respondent and since it is proved on record that the junior to the petitioner is still continuing with the respondent corporation and thus there is utter violation of section 25G & 25H of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordships of *Hon'ble Supreme Court incase titled as State of Haryana Vs. Dilbag Singh reported in 2007 LLR 72 SC* in which it was held that :

“Where Labour Court found that person junior to respondent was still working and thus there was breach of section 25-G & 25-H of the Act. Court directed reinstatement with 50% back wages.”

Similarly, our own Hon'ble High Court of HP has held incase titled as *State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903.* in which it was held that :-

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

15. Thus, having regard to entire evidence on record and inview of the fact that the juniors to the petitioner are still working with the respondent corporation as admitted by RW1 Er. Rakesh Verma and even the petitioner had put in 304 days in twelve calendar months preceding his termination and no notice nor compensation was paid to him before his termination and as such I have no hesitation in coming to the conclusion that the juniors to petitioner are still working with the respondent corporation and as such the termination of services of petitioner by the respondent without complying with the provisions of I.D Act, 1947 is improper and unjustified as the respondent has violated the principle of first come last go and also violated the provisions of sections 25N, 25G & H of the Industrial disputes Act, 1947. Accordingly issue no.1 is decided in favour of petitioner and against the respondent.

Issue No.2

16. Since I have held under issue no.1 above that the termination of services of the petitioner by the respondents without following with the provisions of Industrial Disputes Act, 1947 is improper, unjustified and illegal, hence the petitioner is held entitled to reinstatement in service alongwith seniority and continuity. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided against the respondent and in favour of the petitioner.

Issue No.3

17. In support of this issue, no evidence was led by the respondent being the legal issue. However, I have scrutinized the record of the case and observed that the petitioner being daily wages beldar having completed more than 240 working days with the respondent and the juniors to the petitioner is still continuing with the respondent, who was illegally terminated from service without any basis, hence being aggrieved has enforceable cause of action to file this petition and I find nothing wrong with this petition which is maintainable in the present form. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 4th August, 2009 in the presence of parties counsels.

(Parveen)

J.S MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP CAMP AT SOLAN.

Ref no. 91 of 2005.
Instituted on 21.12.2005.
Decided on. 6.8.2009.

Gopal Singh S/o Shri Kishan Singh R/o Village Tikkar, P.O Naina Tikkar, Tehsil Pachhad, District Sirmour, HP.

Petitioner.

Vs.

The Executive Engineer, I&PH department Sub Division-III, Solan, District Solan, HP.

Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri O.P Sharma, Ld. Csl.
For respondent : Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:

“Whether the plea of the Executive Engineer, HP I&PH Department Sub Division-III, Solan that Shri Gopal Singh S/o Shri Kishan Singh daily wages workman left the job of his own accord w.e.f. 1.11.1996 is legal and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that he was engaged as beldar by the respondent in the year 1985 and worked as such on daily wages basis upto December, 1996 when his services were disengaged by the respondent without any notice and without paying any compensation which amounts to retrenchment in the law and before affecting the retrenchment, it was incumbent upon the respondent to give one month notice and compensation as per section 25F of the Industrial disputes Act, 1947 and even the principle of last come first go was not followed by the respondent and the persons junior to the petitioner are still working which can be verified from the seniority list prepared by the respondent at divisional level and that the petitioner had completed 240 days of service in a calendar year and that the action of the respondent in removing the services of the petitioner is unjustified, arbitrary, violative of mandatory provisions of the Industrial Disputes Act, 1947 which amounts to unfair labour practice and as such prayed for reinstatement in service with all benefits, seniority alongwith full back wages, hence this claim.

3. The respondent resisted and contested the claims of the petitioner, which filed reply interalia raising preliminary objections maintainability as the petitioner does not fall under the definition of section 2 of the Industrial Disputes Act, 1947 and that the respondent department is not an industry, abandonment and barred by limitation. On merits, it is contended that the petitioner was engaged on daily wages basis during Sept. 1995, who worked for 101 days in the year 1995 and 305 days in the year 1996 and that the petitioner left the job of his own w.e.f. 1.11.1996. It is denied that the services of the petitioner were terminated by the respondent, who abandoned the job of his own. It is also denied that many new persons were employed by the respondent and as such there was no need to serve notice upon the petitioner. It is also denied that the petitioner never met with the respondent nor made any representation regarding his reengagement in the work, hence prayed for dismissal of the claim.

4. No rejoinder filed. The following issues were framed by this Court on 4.8.2006 on the pleadings of the parties:

1. Whether the petitioner has abandoned his job w.e.f. 1.11.1996? If so, its effect?

OPR.

2. If issue no.1 is not proved, to what relief the petitioner is entitled to?

OPP.

3. Relief.

5. I have heard the Ld. Counsel for the petitioner and Ld. DDA for respondent and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1.	No.
Issue no. 2.	Entitled for reinstatement in service with seniority and continuity but without back wages.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No.1

7. Coming to this issue, the respondent has examined RW1 Er. Ritesh Kumar, who has stated that he was working as J.E at IPH Section Chambaghat Division, Solan and Gopal Singh was

working as beldar, who worked from 1995 to 31.10.1996 on muster roll basis and proved the mandays chart Ex. RW1 of the petitioner. The petitioner abandoned the job of his own and the work was available with the department but the petitioner failed to report for duties.

8. To prove the case, the petitioner appeared into the witness box as PW1, who has stated that he was engaged as beldar on daily wages by XEN IPH Sub Division, Solan on 1.9.1995 and worked as such till 31.12.1996 and then his services were terminated by the respondent without notice and without payment of compensation. His juniors S/Shri Hem Raj and Anil are still continuing in service. He had completed 240 days in a calendar year preceding his termination and he is still unemployed and as such prayed for reinstatement in service alongwith back wages and seniority. He had not abandoned the job of his own.

9. The case of the petitioner is that he being the daily wages beldar having worked for more than 240 days in each calendar year preceding his termination and his termination without notice and compensation is illegal and even juniors to him are still working with the respondent and as such he is entitled for reinstatement in service with all consequential benefits.

10. On the contrary, the respondent contends that the petitioner was never terminated from service, who left the job of his own without any intimation to the respondent and no junior to the petitioner is working with the department, hence the petitioner is not entitled to any relief claimed by him.

11. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged as daily paid beldar by the respondent department 1.9.1995, who continued as such till 31.10.1996, who worked for 101 days in the year 1995 and 305 days in the year 1996 as is evident from the mandays chart Ex. RW1/A placed on record and it is also clear that no notice nor any compensation was paid to the petitioner at the time of his retrenchment and as such it is clear that the petitioner had completed 305 working days in twelve calendar months preceding his termination.

Section 25-F of the 'Act' says that:

25-F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)

13. After the close scrutiny of section 25F, it is clear that termination of services of the petitioner, who has worked for 305 days in twelve calendar months preceding his termination as is evident from mandays chart Ex. RW1 placed on record and his termination without notice under section 25F and payment of compensation is illegal and as such, the termination amounts to illegal retrenchment contravening the provisions of section 25-F of the I.D Act, 1947. Moreover, it is well settled by our own Hon'ble High Court incase titled as State of Himachal Pradesh Vs. Sohan Lal reported in latest HLJ 2007 (HP) 776 in which it was held that :

“Industrial Disputes Act, 1947, Section 25F. Counting of 240 days for compliance of section 25F. 240 days has to be calculated preceding the date of retrenchment during 12 calendar months and not a year. Retrenchment was void ab-initio for non compliance with the mandatory provisions of section 25F.”

14. Now, advertng to the legal aspect of the case, the petitioner has proved on record that no notice was given nor any compensation was paid to him at the time of his termination which is mandatory under section 25F of the Industrial disputes Act, 1947 as the petitioner has proved on record that he had worked with the respondent for 305 days in twelve calendar year and as such the case of the petitioner squarely falls under section 25F of the Industrial Disputes Act, 1947. No doubt that the respondent has tried to establish on record that the petitioner had abandoned the job of his own but I find no force in this contention as the respondent has failed to prove on record that the petitioner was called to resume his duties as no letter nor any explanation nor domestic enquiry was conducted against the petitioner for his abandonment. However, it is well settled by our own Hon'ble High Court incase titled as State of HP & Others Vs. Bhatag Ram & Another as reported in latest HLJ 2007 (HP) 903 in which it was held that:

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

15. Thus, having regard to the above cited rulings and having regard to the entire evidence on record, I have no hesitation in coming to the conclusion that the plea of the Executive Engineer, I&PH Department Sub Division-III Solan that the petitioner had left the job of his own accord w.e.f. 1.11.1996 is illegal and unjustified especially when no domestic enquiry was conducted against the petitioner for his alleged abandonment and on the other hand, the petitioner has proved on record that he had worked with the respondent for more than 240 working days in twelve calendar months preceding his termination and as such the abandonment of the petitioner from the job is not proved on record. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

Issue No.2

16. Since I have held under issue no.1 above that the services of the petitioner were illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947 and there was no abandonment on the part of the petitioner, hence the petitioner is held entitled to his reinstatement in service alongwith seniority and continuity from the date of his illegal termination i.e 1.11.1996. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issues no.1 & 2, the claim of the petitioner is succeeds and is herby allowed and the petitioner is ordered to be reinstated in service

forthwith with seniority and continuity. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 6th August, 2009 in the presence of parties counsels.

(Parveen)

J.S. MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.
Camp at Solan.

Ref.143/2006

11.8.2009

Sh Hem Raj V/s Ex. Engg.(E) Division –II HPPWD, Shimla.

11.8.2009:-

Present:- Sh Devinder Negi, Ld Vice csl for petitioner.
Sh Jagdish Kanwer, Ld. DDA for respondent.

No PWs present nor any steps taken. I am satisfied that sufficient opportunities have been afforded to the petitioner to bring his evidence but to no avail, hence the evidence of the petitioner is closed by the order of the Court.

Heard, In view of no statement led by the petitioner, it can safely be concluded that the services of the petitioner have not been terminated by the respondent without complying the provisions of the industrial Disputes Act,1947 and as such the petitioner is not entitled to any service benefits as claimed by him. Moreover, there is nothing on record which could show that the present petition is not maintainable and obviously therefore, on the basis of no such evidence on record, issues no, 1 & 2 are decided against the petitioner and in favour of respondent while issue no 3 is decided against the respondent holding that the petition is perfectly maintainable. Accordingly, all these issues are answered in negative.

RELIEF

As a sequel to my above discussion on issue no. 1 to 3, the claim of the petitioner is dismissed for want of evidence as a result of which the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

11.8.2009

Presiding Judge,
Labour Court, Shimla.

Ref.22/2006

11.8.2009

Sh Jarnail Singh V/s M.D.HRTC, Shimla.

11.8.2009:-

Present:- Sh Shashi Shirshoo, Ld Vice csl for petitioner.
Sh Rajesh Verma , Ld. DDA for respondent.

No PWs present nor any steps taken. I am satisfied that sufficient opportunities have been afforded to the petitioner to bring his evidence but to no avail, hence the evidence of the petitioner is closed by the order of the Court.

Heard, In view of no statement led by the petitioner, it can safely be concluded that the services of the petitioner have not been terminated by the respondent without holding any proper domestic enquiry and as such the petitioner is not entitled to any service benefits as claimed by him. Moreover, there is nothing on record which could show that the petitioner is not a workman and obviously therefore , on the basis of no such evidence on record, issues no, 1& 2 are decided against the petitioner and in favour of respondent while issue no 3 is decided against the respondent holding that the petition is workman. Accordingly, all these issues are answered in negative.

Relief.

As a sequel to my above discussion on issue no. 1 to 3, the claim of the petitioner is dismissed for want of evidence as a result of which the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
11.8.2009

*Presiding Judge,
Labour Court, Shimla.*

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.

Ref no. 48 of 2006.
Instituted on 7.4.2006.
Decided on. 12.8.2009.

Leela Dutt S/o Shri Bhajan Dass R/o Village & P.O Khera, Tehsil Sunni, District Shimla, HP.

Petitioner.

Vs.

The Executive Engineer, Shimla Division no. III HPPWD, Shimla-1.

Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Vishal Panwar, Ld. Csl.

For respondent : Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:

“Whether the termination of services of Shri Leela Dutt S/o Shri Bhajan Dass workman by the Executive Engineer, Shimla Division no. III, HPPWD Shimla, HP w.e.f. 1.1.02 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that he was engaged as beldar on daily wages basis in the office of the respondent w.e.f. 21.12.2000, who worked continuously with the respondent and even the petitioner was also asked to perform the duties of peon from time to time and that the petitioner had worked upto 31.12.2001 and completed more than 240 days during the preceding twelve calendar months but the services of the petitioner were terminated on 1.1.2002 by the respondent without giving reason or notice under section 25F of the Industrial Disputes Act, 1947 and as such the termination of the services of the petitioner is void-ab-initio and that the HPPWD constitutes one unit for the purpose of seniority and the over all supervision of the department is managed by the Secretary PWD and the different divisions are created only for administrative convenience and that the petitioner made several requests seeking reemployment by visiting the office of the respondent number of times on the assumption that the department had retained the services of Shri Roshan Lal who was engaged in the month of March/April, 2001 which action of the respondent amounts to violation of section 25G & H of the Industrial Disputes Act, 1947 and even the respondent has failed to comply with the principle of first come last go and that the respondent while terminating the services of the petitioner have grossly and palpably violated the well settled principles of law and provisions of Industrial Disputes Act, 1947 and that the respondent had failed to tender retrenchment compensation on account of service rendered by the petitioner to which he was entitled to and that the respondent recruited fresh hand Shri Roshan Lal in the month of April, 2001 and never offered the employment to the petitioner despite several requests made by the petitioner time and again and the respondent is required to maintain the seniority of the workmen and to offer employment on that basis but the respondent failed to discharge their duty and as such prayed for reinstatement in service with all consequential benefits alongwith full back wages, hence this claim duly supported by an affidavit.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability, suppression and concealment of material facts, having no cause of action and that the department of HPPWD is not an industry and barred by delay and laches. On merits, it is contended that the petitioner was engaged on daily wages basis on the request, who was not engaged in accordance with law and that the petitioner had worked with the respondent as casual worker and the services of the petitioner were purely on casual basis, hence the question of termination does not arise at all and the notice for termination of services is not required as the petitioner himself left the job of his own. It is denied that the petitioner has any claim against the respondent as the respondent does not come under the purview of Industrial Disputes Act, hence the petition is liable to be dismissed. It is also contended that the respondent has done nothing in violation of any provisions as alleged and that the seniority of beldars is Division wise and not as State cadre. It is denied that the petitioner is entitled to any compensation and has any claim for regularization of services with the respondent. It is also denied that the respondent had recruited fresh hands against the petitioner and as such the question of

reemployment and regularization after a lapse of six years does not arise which is time barred. It is also denied that the petitioner had completed 240 days, hence prayed for dismissal of the claim.

4. No rejoinder filed. The following issues were framed by this Court on 18.6.2007 on the pleadings of the parties:

1. Whether the petitioner has been illegally terminated by the respondent without complying with the provisions of Industrial disputes Act, 1947? If so, its effect?

OPP.

2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to?

OPP.

3. Whether the petition in the present form is not maintainable as the petition is barred by limitation?

OPR.

4. Relief.

5. I have heard the Ld. Counsel for the petitioner and Ld. DDA for respondent and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1.	Yes.
Issue no. 2.	Entitled for reinstatement in service with seniority and continuity but without back wages.
Issue no.3	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No.1

7. Coming to this issue, the petitioner stepped into the witness box as PW1, who has stated that he was engaged as daily wager beldar by the respondent on 21.12.2000 and continued as such till 31.12.2001 and then his services were orally terminated by the respondent without any notice and without compensation, who had worked for more than 240 working days in a calendar year preceding his termination and Shri Roshan Lal junior to him is still working with the respondent, who was engaged in April, 2001 by the respondent. He is still unemployed and unable to maintain his family and as such prayed for reinstatement in service with all consequential benefits including back wages.

8. To rebut the case of the petitioner, the respondent has examined Er. Pritam Dev Kashyap, who has stated that he has been posted as an Additional Assistant Engineer, HPPWD, Division Shimla-1, HP since 2006 and is well conversant with the facts of the case. The petitioner was engaged as beldar on daily wages in December, 2000 and continued as such till 31.12.2001 and then he left the job of his own, who did not resume his duties subsequently nor approached the respondent department for his reengagement. In December, 2001, there were sixteen beldars including petitioner on muster roll Ex. RA and again the muster roll Ex. RB was issued for Jan.

2002 against the same strength but the petitioner did not turn up for his duties and likewise the muster roll Ex. RC for Feb. 2002 was issued for the same strength of beldars but the petitioner did not turn up. The petitioner has not completed 240 working days in any calendar year preceding his abandonment nor any junior to the petitioner was retained by the respondent. The petitioner was never terminated from service, hence the claim of the petitioner is false.

9. The case of the petitioner is that he being the daily wages beldar having worked for more than 240 days in each calendar year preceding his termination and his termination without notice and compensation is illegal and even junior to him is still working with the respondent and as such he is entitled for reinstatement in service with all consequential benefits.

10. On the contrary, the respondent contends that the petitioner was never terminated from service, who left the job of his own without any intimation to the respondent and no junior to the petitioner is working with the department, hence the petitioner is not entitled to any relief claimed by him.

11. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged as daily paid beldar by the respondent department in December, 2000, who continued as such till 31.12.2001, who worked for 306 days in the year 2001 and 10 days in the year 2000 as is evident from the mandays chart Ex. RD placed on record and it is also clear that no notice nor any compensation was paid to the petitioner at the time of his retrenchment and as such it is clear that the petitioner had completed 306 working days in twelve calendar months preceding his termination. On the other hand, the respondent has failed to give notice or compensation of one month wages in lieu thereof under section 25F of the Industrial disputes Act, 1947 which is mandatory on completion of 240 working days in twelve calendar months preceding his termination.

Section 25-F of the 'Act' says that:

25-F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)

13. After the close scrutiny of section 25F, it is clear that termination of services of the petitioner after completion of 306 days in twelve calendar months preceding his termination is illegal and unjustified as is evident from mandays chart Ex. RD placed on record and his

termination without notice under section 25F and without payment of compensation is illegal and as such, the termination amounts to illegal retrenchment contravening the provisions of section 25-F of the I.D Act, 1947. Moreover, it is well settled by our own Hon'ble High Court incase titled as State of Himachal Pradesh Vs. Sohan Lal reported in latest HLJ 2007 (HP) 776 in which it was held that :

“Industrial Disputes Act, 1947, Section 25F. Counting of 240 days for compliance of section 25F. 240 days has to be calculated preceding the date of retrenchment during 12 calendar months and not a year. Retrenchment was void ab-initio for non compliance with the mandatory provisions of section 25F.”

14. No doubt, that the petitioner tried to establish on record that Shri Roshan Lal his junior is still working with the respondent department but he has failed to prove on record that on which date the alleged junior was engaged by the respondent as no record from the office of the respondent was summoned nor any witness was produced by the petitioner which could show that Shri Roshan Lal is junior to him and is still working and even no cross examination on the point of alleged junior was made by the petitioner when respondent witness Er. P.D Kashyap appeared as RW1. In view of no such evidence on record, I find no force in this contention, hence rejected.

15. Now, adverting to the legal aspect of the case, the petitioner has proved on record that no notice was given nor any compensation was paid to him at the time of his termination which is condition precedent and mandatory under section 25F of the Industrial disputes Act, 1947 as the petitioner has proved on record that he had worked with the respondent for 306 days in twelve calendar months as beldar. It may not be out of place to mention here that the petitioner in his claim has tried to establish on record that he also worked as peon but there is nothing on record nor proved on record that the petitioner had worked as peon with the respondent and as such the case of the petitioner working as **beldar** on daily wages for 306 working days in twelve calendar months preceding his termination squarely falls under section 25F of the Industrial Disputes Act, 1947. No doubt, that the respondent has tried to establish on record that the petitioner had abandoned the job of his own but I find no force in this contention as the respondent has failed to prove on record that the petitioner was called to resume his duties as no letter nor any explanation nor domestic enquiry was conducted against the petitioner to prove his alleged abandonment. However, it is well settled by our own Hon'ble High Court incase titled as State of HP & Others Vs. Bhatag Ram & Another as reported in latest HLJ 2007 (HP) 903 in which it was held that:

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

16. Thus, having regard to the above cited rulings and having regard to the entire evidence on record, I have no hesitation in coming to the conclusion that the termination of services of Shri Leela Dutt petitioner as **beldar** by the Executive Engineer, Shimla Division no.1, HP PWD Shimla, HP w.e.f. 01.01.2002 without complying the provisions of Industrial Disputes Act, 1947 is improper and unjustified especially when no domestic enquiry was conducted against the petitioner nor any letter to resume his duties was issued by the respondent for proving his alleged abandonment and on the other hand, the petitioner has proved on record that he had worked with the respondent for more than 240 working days in twelve calendar months preceding his termination and as such the abandonment of the petitioner from the job is not proved on record. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

Issue No.2

17. Since I have held under issue no.1 above that the services of the petitioner were illegally terminated by the respondent without complying with the provisions of Industrial Disputes

Act, 1947 and there was no abandonment on the part of the petitioner, hence the petitioner is held entitled to his reinstatement in service as **beldar** alongwith seniority and continuity from the date of his illegal termination i.e 1.1.2002. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondent.

Issue No.3

18. In support of this issue, no evidence was led by the respondent being the legal issue. However, I find nothing wrong with this petition which is perfectly maintainable in the present form and there is no limitation under the I.D Act as it was held by their lordships of **Hon'ble Supreme Court as reported in (1999) 6 SCC 82 case titled as Ajayab singh Vs. Sirhind Co-operative Marketing -cum- processing Service Society Limited and Another** in which it was held that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"

19. Thus, on the strength of this ruling, it can safely be concluded that this petition is not barred by limitation and is perfectly maintainable in the present form. Accordingly, issue no.3 is decided against the respondents and in favour of the applicant.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated as **beldar** in service forthwith with seniority and continuity. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 12th August, 2009 in the presence of parties counsels.

(Parveen)

J.S MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.

Ref no. 51 of 2005.
Instituted on 15.6.2005.
Decided on. 17.8.2009.

Inder Singh S/o Shri Jiwano Ram R/o Village Chandog, P.O Naina Tikkar, Tehsil Pachhad, District Sirmour, HP.

Petitioner.

Vs.

The Executive Engineer, HPSEB Division Rajgarh, District Sirmour, HP.

Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Dibender Ghosh, Ld. Csl.

For respondent : Ms. Sharmila Patial, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:-

“Whether the termination of services of Shri Inder Singh S/o Shri Jiwano Ram ex daily wages beldar by the Executive Engineer, HPSEB Division Rajgarh, District Sirmour, HP w.e.f. June, 1993 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, Shri Inder Singh is entitled to?”

2. The petitioner has filed a claim asserting therein that he was engaged as beldar by the respondent in the year November, 1988 where he continued as such till June, 1993 and the services of the petitioner were orally terminated without assigning any reason and that the work and conduct of the petitioner was always appreciated by the concerned officials and nothing contrary was ever conveyed to the petitioner nor any warning/charge sheet was served upon the petitioner and worked till June, 1993 and that without any reason, the services of the petitioner were terminated as no notice nor wages in lieu of notice and retrenchment compensation has been paid to the petitioner as per the provisions of the Industrial disputes Act, and the petitioner had completed 240 days in a calendar year and that the petitioner visited the office of the respondent for reengagement but nothing has been done by the department and that the petitioner has a right to continue in job till the date of superannuation and that the employer is having the vacant job of regular nature and the respondent had terminated the legal and justified service of the petitioner and that S/Shri Som Dutt and Hari Dutt daily waged beldars, who have been appointed alongwith the petitioner has been regularized and the respondent with malafide intention and to accommodate others, illegally terminated the services of the petitioner which is clear violation of section 25F, 25G, 25H and 25N of the Industrial disputes Act, 1947 and that the petitioner had completed 240 days in twelve calendar months preceding his termination, who had a legal right to be reengaged as well as to be regularized in job and that while terminating the services of the petitioner, the respondent has not followed the principle of last come first go as the juniors to the petitioner has been reengaged after the termination of the services of the petitioner and that the petitioner is a very poor person and due to the illegal action on the part of the respondent, the petitioner was physically as well as mentally harassed for which the respondent is liable to pay the damages and the petitioner is a workman as defined in the Industrial Disputes Act and the respondent is duty bound to follow the provisions of Industrial Disputes Act as well as their own Standing Orders while terminating the services of the

petitioner, who is still unemployed and as such prayed for reinstatement in service from the date of termination with full back wages, seniority and other consequential benefits alongwith costs of the litigation, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of having no enforceable cause of action and that no legal or vested right of the petitioner has been infringed or violated, barred by estoppel and also barred by delay and laches. On merits, it is contended that the petitioner was engaged on daily wages basis as beldar w.e.f. 25.10.1989 and worked upto 15.9.1990 in different spells with the respondent board, who was quite casual to his official duties, who left the job of his own and never completed 240 days in any calendar year and as such no notice is required to be issued in view of the Standing Orders and that the respondent had never terminated the services of the petitioner, who left the job of his own and as such no notice is required to be served to the petitioner and that the petitioner was asked to submit his working days with the respondent but he failed to reply and that Shri Som Dutt worked as daily wages w.e.f. 16.1.1987 to 15.2.1993 and Hari Dutt worked w.e.f. 26.8.1979 to 15.11.1996. It is also contended that the petitioner is not a workman, who never completed 240 days throughout his entire deployment on muster roll whereas the petitioner served on muster roll w.e.f. 25.10.1989 to 15.9.1990 and that the petitioner never met the respondent for his reengagement as he had left the job of his own and as such prayed for the dismissal of the claim as prayed.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 9.5.2006 on the pleadings of the parties:

1. Whether the service of the petitioner has been illegally terminated by respondent without complying the provisions of I.D Act, 1947 is improper and unjustified? If so, its effect?

OPP.

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to?

OPP.

3. Whether the petition in the present form is not maintainable?

OPR.

4. Whether the petition is barred by limitation?

OPR.

5. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1. Yes.

Issue no. 2. Entitled for reinstatement in service with seniority and continuity but without back wages.

Issue no.3.	No.
Issue no.4	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No.1

8. Coming to this issue, the petitioner has examined two PWs in all. The petitioner appeared into the witness box as PW1, who has stated that he was engaged as beldar on daily wages by the XEN HPSEB Rajgarh in November, 1988 and continued as such till June, 1998 with fictional breaks and then he was terminated from service without notice and without compensation, who had completed 240 working days in a calendar year preceding his termination and he visited the office of the respondent several times for his reengagement and also made in writing as per mark A to D but all in vain. The respondent also engaged juniors to him after his termination who are still retained by the respondent and as such prayed for reinstatement in service with continuity in service, seniority and back wages.

9. PW2, Er. Gulab Singh has stated that he has been posted as SDO HPSEB Sarhan since November, 2006 and is well conversant with the facts of the case. The petitioner was engaged as beldar on daily wages in October, 1989 and continued as such till Sep. 1990 with fictional breaks and proved the mandays chart Ex. RA and S/Shri Dhaminder Singh and Rakesh Kumar were engaged and retained by the respondent department after the termination of the petitioner.

10. To rebut the case of the petitioner, the respondent has examined RW-1 Er. S.R Chawala, who has stated that he has been posted as an AEE, HPSEB Division Narag since August, 2008 and is well conversant with the facts of the case. The petitioner was engaged as daily wages beldar w.e.f. 10.11.1989 and continued as such till 26.8.1990 with breaks and then the petitioner abandoned the job of his own, who was never terminated by the respondent and the petitioner had not completed 240 working days in any calendar year preceding his termination and no junior to the petitioner was engaged nor continuing with the respondent and as such the claim of the petitioner is false.

11. The case of the petitioner is that he being the daily wages beldar having worked for more than 240 days in each calendar year preceding his termination and his termination without notice and compensation is illegal and even juniors to him are still working with the respondent and as such he is entitled for reinstatement in service with all consequential benefits.

12. On the contrary, the respondent contends that the petitioner was never terminated from service, who left the job of his own without any intimation to the respondent and no junior to the petitioner is working with the respondent, hence the petitioner is not entitled to any relief claimed by him.

13. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged as daily waged beldar by the respondent on 25.10.1989, who worked till 15.9.1990. The petitioner has failed to prove on record that he had put in more than 240 working days in twelve calendar months preceding his termination as is evident from the mandays chart Ex. RA

placed on record which clearly shows that the petitioner has not completed 240 working days in twelve calendar months with the respondent preceding his termination, hence the case of the petitioner does not fall under section 25F of the Industrial disputes Act, 1947. Apart from it, the respondent has tried to establish on record that the petitioner has abandoned the job of his own but there is nothing on record which could show that the petitioner himself is responsible for loosing his job especially when there is nothing on record which could show that the petitioner was called by the respondent to resume his duties nor any domestic enquiry was conducted against the petitioner for his abandonment, hence I find no force in this contention. Moreover, it was held by our own Hon'ble High Court incase titled as **State of HP & Others Vs. Bhatag Ram & Another as reported in latest HLJ 2007 (HP) 903** in which it was held that:-

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

15. Now, advertng to the other aspect of the case, it is clear that the petitioner was engaged by the respondent as beldar, who worked with the respondent till 15.9.1990. Moreover, the petitioner has proved on record that his juniors are still working with the respondent and as such it is a clear case of section 25G and H of the Industrial Disputes Act, 1947 as PW2 Er. Gulab Singh has admitted in his cross examination that the juniors to the petitioner are still working with the respondent department or in other words the respondent had violated the principle of last come first go when the services of the petitioner were illegally terminated without complying with the provisions of section 25G & H of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordships of **Hon'ble Supreme Court incase titled as State of Haryana Vs. Dilbag Singh reported in 2007 LLR 72 SC** in which it was held that :

“Where Labour found that person junior to respondent was still working and thus there was breach of section 25G & 25H of the Act. Court directed reinstatement with 50% back wages.”

16. Similarly, our own Hon'ble High Court of HP has held incase titled as **State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903** in which it was held that:-

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25G & 25H of the Act.”

17. Thus, having regard to the above cited rulings and having regard to the entire evidence on record and inview of the fact that juniors to the petitioner are still working with the respondent and obviously therefore, I have no hesitation in coming to the conclusion that juniors to petitioner are still working with the respondent and as such the termination of services of Shri Inder Singh petitioner by the Executive Engineer, HPSEB Division Rajgarh w.e.f. June, 1995 without complying the provisions of Industrial Disputes Act, 1947 is improper and unjustified as the respondent has violated the principle of first come last go and also violated the provisions of sections 25G & H of the Industrial Disputes Act, 1947. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

Issue No.2

18. Since I have held under issue no.1 above that the services of the petitioner has been illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947 by retaining juniors to the petitioner in service, hence the petitioner is held entitled to his

reinstatement in service alongwith seniority and continuity from the date of his illegal termination. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondent.

Issue No.3

19. In support of this issue, no evidence was led by the respondent being the legal issue. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

Issue No.4

20. In support of this issue, no evidence was led by the respondent nor it was pointed out during the course of arguments. However, I have scrutinized the record of the case and observed that there is no limitation under the I.D Act as it was held by their lordships of *Hon'ble Supreme Court as reported in (1999) 6 SCC 82 case titled as Ajayab singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another* in which it was held that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

21. Thus, on the strength of this ruling, it can safely be concluded that this petition is not barred by limitation. Accordingly, issue no.4 is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issue no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity from the date of his illegal termination. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 17th August, 2009 in the presence of parties counsels.

(Parveen)

J.S MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.

Ref no. 57 of 2003.
Instituted on. 6.2.2003
Decided on. 17.8.2009.

Nathu Ram S/o Shri Mangal Ram R/o Village Manakpur, P.O Lodhimajra, Tehsil Nalagarh, District Solan, HP.

Petitioner.

Vs.

The Executive Engineer, HPSEB Division, Parwanoo, District Solan, HP.

Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Sunil Chauhan, Ld. Csl.

For respondent : Ms. Shilpa Sood, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of services of Shri Nathu Ram S/o Shri Mangal Ram daily wages beldar by the Executive Engineer, HPSEB division Parwanoo District Solan, HP w.e.f. July, 1998 without complying with the provisions of Industrial disputes Act, 1947 is proper and justified? If not, what relief the aggrieved workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that the respondent is having licence to supply the electrical power to various agencies and had employed the workmen around 50-60 thousand and as such the subject matter falls under chapter VB of the Industrial Disputes Act, 1947 and that the respondent is also state of HP under Article 12 of Constitution of India and as such the union of India as well States are under obligation to comply with Article 41 of constitution of India for better and best opportunities of employment, working condition and wages to maintain themselves of suitable to the requirements and need of the country wherever and that the petitioner was engaged as beldar from March, 1986 to 26.8.1996 by the respondent at Baddi/Barotiwal and after few days, the petitioner was again taken back on duty till 31st July, 1998 and then the petitioner was told by the Junior Engineer that the work of the respondent would be closed till the further decision of the Divisional management and according to the requirement of commercial need, he would be called back for duty but to no avail and then the petitioner raised the demand notice to the respondent and that the petitioner being employed by the respondent is a workman as defined under section 2(s) of the Act and that for the purpose of section 25B of the Act, the petitioner enjoyed the continuity in his service by working more than 240 days in each year till the date of his illegal termination and that the petitioner is unemployed till date and no allegation nor enquiry report was brought on record which is null, void and inoperative due to the failure of the employer to follow the provisions of section 25F, 25N of the Industrial Disputes Act, 1947 and that the action of the respondent is also violative of its Standing Orders and as such prayed that the award be passed in his favour alongwith costs, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections that the petition discloses no enforceable action in favour of the petitioner and against the respondent and that no legal right of the petitioner has been violated by the respondent, barred by delay and laches and also time barred. On merits, it is contended that the petitioner was initially engaged w.e.f. 26.3.1996 and worked upto 25.7.1996 at the first instance with certain breaks and then the petitioner abandoned the job of his own, who was again engaged and worked upto 25.7.1996 and then the petitioner again left the job and did not turn up for his duties, who had not completed 240 days continuous service in the preceding twelve calendar months of his abandonment, hence the petitioner had not acquired the status of a temporary workman whose status remained as casual labour and as such there was no necessity to serve any notice upon the petitioner nor any compensation was payable under the provisions of Industrial Disputes Act, 1947 and that the petitioner is estopped to file and maintain the application on account of his act and conduct, hence the action of the respondent is legal, intervires, bonafide and warrants no interference and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this court on 1.5.2006 on the pleadings of the parties.

1. Whether the services of the petitioner have been illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947? If so, its effect?

OPP.

2. If issue no.1 is proved in affirmative, to what relief of service benefits, the petitioner is entitled to?

OPP.

3. Whether the petition is barred by limitation?

OPR.

4. Whether the petition in the present form is not maintainable?

OPR.

5. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1 No.

Issue no.2 Not entitled to any relief.

Issue no.3 No.

Issue no.4 No.

Relief. Reference answered in negative per operative part of award.

REASONS FOR FINDINGS

Issue No.1

8. Coming to this issue, the petitioner stepped into the witness box as PW1, who has stated that he was engaged as daily wages beldar with the respondent in the year 1995 at Baddi/Barotiwala Sub Divisions for four months, who also worked for two months at Nalagarh and then worked for 1 ½ months at Manpura and then he was removed from service, who had also worked with HPSEB in 1986 at Sai Barotiwala for three months and then he was removed from service. He had worked with HPSEB for 6-7 years with breaks. No notice nor compensation was paid to him at the time of his termination and juniors S/Shri Data Ram and Narata Ram are still continuing with the respondent, hence prayed for reinstatement in service alongwith all consequential benefits.

9. To rebut the case of the petitioner, the respondent has examined RW1 Er. J.S Rana, who has stated that he has been posted as an Assistant Engineer, HPSEB Barotiwala since 11.4.2008 and is well conversant with the facts of the case. The petitioner was engaged as beldar on daily wages on 26.5.1996 and worked till 25.7.1996 and then the petitioner left the job of his own, who was never terminated by the respondent, who never approached the respondent for his reengagement, who had worked for 60 days in the year 1996 preceding his abandonment and proved the mandays chart of the petitioner Ex. RA.

10. The case of the petitioner is that he being the daily wages beldar having completed 240 working days in each calendar year and also in twelve calendar months preceding his termination, who was illegally terminated from service without any reason and no notice nor compensation was paid to him at the time of his removal and as such he is entitled for reinstatement with all consequential benefits.

11. On the contrary, the respondent contends that the petitioner was engaged as daily wages casual labourer, who was never terminated from service, who himself left the job of his own, who had not completed 240 working days in any calendar year preceding his abandonment and no junior to the petitioner is still working with the respondent, hence the petitioner is not entitled to any relief as prayed by him.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged by the respondent as daily wages beldar, who worked w.e.f. 26.5.1996 to 26.6.1996 for 60 days with the respondent as is evident from the mandays chart Ex. RA placed on record. The petitioner has failed to prove that he had put in more than 240 working days in twelve calendar months preceding his termination. No doubt, the petitioner has tried to establish on record that he had completed 240 working days in twelve calendar months preceding his termination but there is nothing on record which could go to show that the petitioner had completed 240 working days in twelve calendar months preceding his termination, hence the case of the petitioner does not fall under section 25-F of the Act. It is well settled that where the workman has not produced any evidence to show that he had worked for more than 240 working days preceding his termination and that no evidence has been led in order to show that his juniors are still working with the respondent, the petitioner is not entitled to any protection under the provisions of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordship of Hon'ble Supreme

Court in **AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh** in which it was held that:-

“In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”

14. Now, turning to the other aspect of the case, the petitioner also tried to establish on record that his juniors are still continuing with the respondent board but he did not prove on record that on which date they joined the Board and infact they are juniors to the petitioner. On the other hand, the respondent has proved on record that the petitioner was engaged as casual labourer, who had failed to prove on record that he had completed 240 working days in twelve calendar months preceding his termination and his juniors are still continuing with the respondent Board and therefore, the case of petitioner cannot be accepted for his reinstatement especially when the petitioner has only put in sixty days in the year 1996 as is evident from the mandays chart of the petitioner Ex. RA and further no junior to the petitioner is proved to be working with the respondent.

15. Thus, on the strength of the above cited rulings and having regard to the entire evidence on record, it can safely be concluded that the services of the petitioner have not been illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947, who has not completed 240 working days in twelve calendar months preceding his termination. Accordingly, this issue is decided in favour of the respondent and against the petitioner.

Issue No. 2

16. Since, I have held under issue no.1 above, that the services of the petitioner have been legally dispensed with by the respondent without notice or compensation, hence the petitioner is not entitled to any service benefits. Accordingly, issue no.2 is answered in negative.

Issue No.3

17. In support of this issue, no evidence was led by the respondents. However I have scrutinized the record of the case and observed that there is no limitation under the Industrial Disputes Act, 1947 as it was held by their lordships of Hon'ble Supreme Court reported **in (1999) 6 SC 82 case titled as Ajayab singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another** in which it was held that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

18. Thus, on the strength of this ruling, it can safely be concluded that there is no limitation under the Industrial Disputes Act, 1947 and as such this issue is decided in negative.

Issue No.4

19. In support to this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.4 is decided in favour of petitioner and against the respondent.

RELIEF

As a sequel to above discussion and findings on issues no.1 to 4, the claim of the petitioner fails and is hereby dismissed and the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 17th August, 2009 in the presence of parties counsels.

(Parveen)

JAGMOHAN SINGH MAHANTAN,
*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.

Ref no. 370 of 2002.
Instituted on. 29.11.2002.
Decided on. 18.8.2009.

Kamal Kumar, S/o Smt. Santosh Devi, R/o Village Bhergoan, P.O Rajgarh, District Sirmour, HP.
Petitioner.

Vs.

1. The Managing Director, HP State Cooperative Agriculture & Rural Development Bank Shimla.
2. The Manager, HP State Cooperative Agriculture & Rural Development Bank Rajgarh, District Sirmour, HP.

Respondents.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri O.P Sharma, Ld. Csl.
For respondent : Shri C.M Verma, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of services of Shri Kamal Kumar S/o Smt. Santosh Devi w.e.f. 30.10.1998 by the Managing Director, HP State Cooperative Agriculture & Rural Development Bank Shimla HP without complying the provisions of section 25F of the Industrial Disputes Act, 1947 and retaining the juniors in service as alleged by workman is proper and justified? If not, what relief of service benefits, the above workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that the petitioner was engaged as part time sweeper-cum-peon by the respondents from 1.1.1995, who worked upto 2.8.1999 continuously and the respondents also resorted to fictional breaks in the service of the petitioner which amounts to unfair labour practice and also in violation of well settled law. The petitioner had completed 240 days of service under sections 25 of the Industrial Disputes Act, 1947, who is also a workman and that the services of the petitioner were illegally and unjustifiably dispensed with on 2.8.1999 in violation of section 25F & H of the Act as no compensation was paid to the petitioner nor any notice was paid to the petitioner at the time of his disengagement and even the principle of last come first go was not observed as the persons junior to the petitioner are still serving with the respondent and that the termination of the services of the petitioner amounts to retrenchment which should be affected only after completing all codal formalities/complying with the mandatory provisions of the Industrial Disputes Act, 1947 and as such prayed for reinstatement in service with all the benefits incidental thereof, hence this claim duly supported by an affidavit.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia contending that the petitioner was engaged as a part time sweeper for one hour daily w.e.f. 1.1.1995 @ Rs. 5.30 paisa per hour, hence the allegations made by the petitioner that he had completed 240 days and had worked within the meaning of Industrial Disputes Act is incorrect as the petitioner was engaged only for one hour on contract basis. It is denied that the petitioner remained in service till 2.8.99. It is contended that the services of the petitioner have been terminated w.e.f. 31.5.1997 and that the petitioner was engaged w.e.f. 1.6.1997 on contract basis @ of Rs. 950 /- per month with a break of 89 days, who remained in the employment till 30.4.1998. It is denied that at the time of his removal, the principle of last come first go was not observed. It is also denied that juniors remained employed thereafter and many fresh engagements have been made by the respondents. It is also contended that the petitioner was reengaged as water carrier on contract basis on 30.4.1998 under the contingency arrangement for providing him service for short period @ Rs. 30/-, who remained till 2.8.1999 and since the services of the petitioner were only for a short period, hence no right has accrued in favour of the petitioner and there is no truth in the averments made in the petition and as such prayed for the dismissal of the petition.

5. No rejoinder filed. The following issues were framed by this court on 6.5.2004 on the pleadings of the parties.

1. Whether the termination of services of the petitioner by respondent w.e.f. 30.4.1998 without complying with the provisions of section 25F of the Industrial Disputes Act, 1947 and retaining the juniors in service is proper and justified?

OPR.

2. If issue no.1 is not proved, to what relief of service benefits, the petitioner is entitled to?

OPP.

3. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1 Yes.

Issue no.2 Not entitled to any relief.

Relief. Reference answered in negative per operative part of award.

REASONS FOR FINDINGS

Issue No.1

8. Coming to this issue, the petitioner stepped into the witness box as PW1, who has stated that he was appointed in the respondent bank in Jan. 1995 on part time basis and remained till 2.8.1999. He was working for 4-5 hours and not for one hour but the contract was made by the employer at their own, who worked continuously during the above period and no notice nor payment was given to him at the time of his termination. After his removal, one Shankar Kumar S/o Shri Ramesh Kumar of Rajgarh was engaged, who belongs to his village. He was going on tour for recovery purpose and the T.A was being paid to him.

9. To rebut the case of the petitioner, the respondent examined RW1 Shri Madan Mohan, who has stated that the petitioner was engaged as sweeper on hourly basis w.e.f. 1.1.1995 whose services were terminated on 31.5.1997 as per the directions of the Head Office. The petitioner was working for two hours in the bank. The petitioner was again engaged on contract basis on 1.6.1998 to 31.4.1998 and the Bank issued the termination letter dated 1.5.1998 to the petitioner. The petitioner was again engaged on 30.4.1998 as water carrier @ Rs. 30 per day against contingency and the services of the petitioner were terminated on 2.8.1999 after giving notices mark X & Y. No persons thereafter were engaged by the Bank and the petitioner had not completed 240 days of service in any calendar year as the petitioner was engaged according to the need of work.

10. The case of the petitioner is that he being the part time worker had completed 240 working days in each calendar year and also twelve calendar months preceding his termination, who was illegally terminated from service by the respondent without notice and compensation and junior to him is still working with the respondent and as such he is entitled for reinstatement with all consequential benefits.

11. On the contrary, the respondent contends that the petitioner was engaged as sweeper/water carrier on hourly basis according to the need of work for 89 days and no junior to the petitioner is working with the respondent bank, hence the petitioner is not entitled to any relief as claimed by him.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged by the respondent as part time worker/water carrier from time to time as per the need of work on contract basis @ of 30/- per day which fact has not been disputed by both the parties.

No doubt, the petitioner has tried to establish on record that he has put in more than 240 working days in a twelve calendar months preceding his termination by working full time in a day but the petitioner has failed to prove that he had put in more than 240 working days in twelve calendar months preceding his termination, hence the case of the petitioner does not fall under section 25-F of the Act. It is well settled that where the workman has not produced any evidence to show that he had worked for more than 240 working days preceding his termination and that no evidence has been led in order to show that his juniors are still working with the respondent, the petitioner is not entitled to any protection under the provisions of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in **AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh** in which it was held that:-

“In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced; no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”

14. Now, turning to the other aspect of the case, the petitioner tried to establish on record that his juniors are still continuing with the respondent department but he did not prove on record that on which date they joined the respondent and in fact they are juniors to the petitioner. On the other hand, the respondent has proved on record that the petitioner was engaged as part time worker according to the need of work, and moreover, the petitioner has failed to prove on record that he had completed 240 working days in twelve calendar months preceding his termination and it is not proved on record that his juniors are still continuing with the respondent and therefore, the case of petitioner cannot be accepted for his reinstatement especially when the petitioner was engaged as part time worker according to need of work and subject to availability of funds.

15. Thus, on the strength of the above cited rulings and having regard to the entire evidence on record, it can safely be concluded that the termination of the services of the petitioner by respondent w.e.f. 30.4.1998 without complying with the provisions of section 25F of the Industrial Disputes Act, 1947 and no junior to the petitioner was retained in service by the respondent is proper and justified as the petitioner had not completed 240 working days in twelve calendar months preceding his termination nor his alleged junior is proved to be working with the respondent on record and as such the petitioner is not entitled to the protection of section 25F of the Industrial Disputes Act, 1947. Accordingly, this issue is decided in favour of the respondent and against the petitioner.

Issue No.2

16. Since I have held under issue no.1 above, that the services of the petitioner has been legally dispensed with by the respondent without following the provisions of section 25F of the Industrial Disputes Act, 1947, hence the petitioner is not entitled to any service benefits as claimed by him. Accordingly, issue no.2 is answered in negative.

RELIEF

As a sequel to above discussion and findings on issues no.1 & 2, the claim of the petitioner fails and is hereby dismissed and the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 18th August, 2009 in the presence of parties counsels.

(Parveen)

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

Ref.62/2003

Sh Shashi Bhushan & others V/s G.M.Sidhartha Textile Mills Solan.

18.8.2009:-

Present:- None for petitioner.
Sh Rajeev Sharma, Ld. Csl foe respondent.

It is 11.50AM but no appearance put in by the petitioner or his counsel . Be awaited.

Sd/
Presiding Judge,
Labour Court, Shimla.

18.8.2009:-

Present:- None for petitioner.
Sh Rajeev Sharma, Ld. Csl foe respondent.

It is already 2.35PM. Case called out pre and post lunch sessions but no appearance put in by the petitioner or his counsel. I am satisfied that sufficient opportunities have been afforded to the petitioner to lead his evidence but to no avail.

Heard. Record perused . In view of no such evidence on record, I am satisfied that the dismissal from service of Shri Shashi Bhushan Singh and eight other workmen by the President of M/s Sidhartha Super Spinning Mills Ltd Village Nihala Khera, Tehsil Nalagarh, District Solan on 14.2.2002 on the basis of domestic enquiry is proper and justified and as such the petitioners are not entitled to any service benefits as claimed by them, hence issue no.1,2&5 are decided in favour of the respondent and against the petitioners holding that the services of the petitioners have been terminated after holding proper domestic enquiry. While issues no 3&4 are decided in favour of the petitioners and against the respondent . Accordingly, the claim of the petitioners is dismissed for want of prosecution and as such the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
18.8.2009

Sd/-
Presiding Judge
Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.

Ref. No. 228 of 2003.
Instituted on. 4.9.2003.
Decided on. 19.8.2009.

Naresh Kumar S/o Shri Chet Ram R/o Village & P.O Hanuman Barog, Tehsil Arki, District Solan, HP.

Petitioner.

Versus

Regional Manager, HRTC, Shimla 171003, HP.

Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri M.L Sharma, Ld. Csl.

For respondent: Shri Rajesh Verma, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“क्या श्री नरेश कुमार सपुत्र श्री चेत राम कामगार को प्रबन्ध निदेशक हिमाचल पथ परिवहन निगम, शिमला-3, द्वारा औद्योगिक विवाद अधिनियम, 1947 में दिए गए प्रावधानों की अनुपालना किए बिना दिनांक 19-4-2001 को नौकरी से निकाला जाना उचित व न्याय संगत है ? यदि नहीं, तो उपरोक्त कामगार किस राहत एवं सेवा लाभों का पात्र है ?

2. The petitioner has filed a separate claim asserting therein that he was initially engaged as peon on 16.9.1999 for 89 days and the petitioner was performing his duties as peon with the respondent from time to time and on expiry of 89 days, the petitioner was reengaged for another 89 days till 17.4.2001 when his services have been orally terminated by the respondent and for this period, the petitioner was given only notional breaks of one or two days and that the petitioner was paid Rs. 2000/- per month by respondent and that against the termination, the petitioner approached the Administrative Tribunal which was dismissed on the ground of jurisdiction and that the oral termination of the petitioner is wrong, illegal, arbitrary and against the facts and materials on record which is contrary to the law laid down by the Hon'ble Supreme Court and that the oral termination of the petitioner cannot sustain in the eyes of law which is in violation of section 25F of the Industrial Disputes Act, 1947, who had completed 240 days in preceding twelve calendar months prior to his retrenchment and that the termination of the services of the petitioner is violative of Articles 14, 16 and 21 of the Constitution of India as the petitioner has been thrown on the road for starvation and that the petitioner is ready and willing to perform his duties as the work and funds are available with the respondent but its officials have terminated the services of the petitioner and as such prayed that the oral termination of the services of the petitioner w.e.f. 17.4.2001 be held wrong, illegal, arbitrary and violative of Articles 14, 16 and 21 of the Constitution of India and that the petitioner be held to be in continuous service of the respondent with all consequential benefits, reinstatement and regularization, hence this claim.

3. The respondent resisted and contested the claim of petitioner, which filed reply interalia raising preliminary objections of maintainability and that the petitioner was employed on contract basis. On merits, it is contended that the petitioner was engaged on contract basis for a specific period of 89 days w.e.f. 16.9.1999 at a fixed salary of Rs. 2000/- per month on part time for six hours daily and then the petitioner was again engaged as part time peon for further period of 89 days on a monthly salary of Rs. 2000/- per month w.e.f. 29.1.2000 to 27.4.2001 and from 27.4.2001 for another period of 89 days. The petitioner was again engaged as and when the work was available with the respondent till 16.4.2001 when his services were dispensed with as his services were no longer required by the respondent as there was no work available with respondent and that the services of the petitioner were dispensed with after the expiry of specific period of 89 days for which he was appointed and that the services of the petitioner were dispensed with on the basis of terms and conditions of his appointment letter/contract. It is denied that the petitioner had completed 240 days in any of the preceding twelve calendar months of calendar year as his appointment was made for a specific period of 89 days and as such the petitioner is not entitled to the benefits as envisaged under section 25F of the Industrial Disputes Act, 1947 and that there is no violation of the Articles 14,16 and 21 of the Constitution of India and that the respondent has got no work and funds as alleged by the petitioner as the respondent is running in huge losses and is finding it difficult even to pay the salaries of its regular employees and as such prayed for the dismissal of claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 21.12.2005.

1. Whether the services of the petitioner has been illegally terminated by the respondent?
If so, its effect?

OPP.

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to?

OPP.

3. Whether the present petition is not maintainable?

OPR.

4. Relief.

6. I have heard the learned counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under:

Issue no.1 Yes.

Issue no.2 Entitled for reinstatement in service alongwith seniority and continuity but without back wages.

Issue no.3 No.

Relief. Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No.1

8. Coming to issue no.1, the petitioner has examined himself as PW-1, who has stated on oath that he was engaged as peon on 16.9.1999 at Dhalli, who was working at the house of the Managing Director whose services were terminated on 17.4.2001 and he was drawing his salary from HRTC office Dhalli. Initially he was engaged for 89 days and then he got the permanent order on 28.9.2000. He had worked for more than 240 days in a year. No notice nor compensation was paid to him at the time of his removal and his services were allowed to continue till further orders as per letter dated 16.3.2001 Ex. PA.

9. To rebut the case of the petitioner, the respondent examined Shri Jagmohan Chauhan, Senior Assistant HRTC Dhalli, who has stated that the petitioner was engaged as part time peon at the fixed salary of Rs. 2000/- for six hours per day for a period of 89 days on 16.6.1999, who used to be reengaged as per requirement from time to time, who worked lastly on 16.4.2001 and the petitioner was engaged vide office letters Ex. RA, RA1, Ex. RA2 and Ex. RA3. The petitioner was engaged for specific period and for specific work and no work is now available with the respondent for petitioner.

10. The case of the petitioner is that he being a peon having worked for more than 240 days and his termination without notice and compensation is illegal and as such he is entitled for the protection of section 25-F of the Industrial Disputes Act, 1947.

11. On the contrary, the respondent contends that the petitioner is not entitled to any benefits under the Industrial Disputes Act, 1947 as he was engaged on contract basis for 89 days only and the contract was repeated from time to time for 89 days and even the petitioner has not completed 240 working days in any calendar year before his termination.

12. I have considered the respective contention of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, there is no dispute about the appointment of the petitioner as part time peon, who was appointed as peon by the respondent on 16.6.1999 and worked till 16.4.2001 with fictional breaks. The petitioner was appointed as part time on contract basis for 89 days which was renewed from time to time as is evident from Ex. RA1 to Ex. RA3 placed on record who worked for 328 days w.e.f. 5/2000 to 4/2001 as is evident from the letter issued by the respondent under the Right to Information Act placed on record. Moreover, the petitioner has completed 240 working days in a calendar year and his termination without notice or retrenchment compensation is illegal. Here I am fortified with a view taken by their lordships of **Hon'ble Supreme Court as reported in Haryana State Electronics Development Corporation Limited Vs Mamnl, (2006) 9 SCC 434.** that appointment for a short period (89 days) and termination of services at the end of the said period and reappointment after a gap of one day, such action of termination and reappointment repeated again and again for a period of about one year and a half year, in such circumstances, the Hon'ble Supreme Court has held the termination not bonafide but adopted to defeat the object of the Act. Thus it is not covered by section 2(oo) (bb) of the Industrial Disputes Act, 1947.

14. **Similarly our own Hon'ble High Court in case shri Manoj Kumar Sharma Vs. HRTC & Another in CWP No. 39 of 06 dated 28.5.2007** has held that the intention of the management was not to engage the respondent workman for a specified period was to defeat the rights of a workman under section 25-F of the Act as in that case also the petitioner was initially

appointed for 89 days and after giving him fictional breaks, reappointed for another 89 days followed by one year appointment. The practice has been adopted by the management of HRTC to defeat the provisions of section 25-F of the Industrial Disputes Act, 1947 which amounts to unfair labour practice. In the instant case also the petitioner was initially appointed for 89 days and after giving him fictional break, reappointment for another 89 days followed by others appointments for 89 days as is evident from Ex. RA1 to Ex. RC3. Thus, it is fully proved on record that even after giving fictional breaks, the petitioner has completed 328 days in the year 2000-01 being twelve calendar months preceding his termination as is evident from letter dated 2.12.2008 placed on record. This practice of fictional breaks has been adopted by the respondent to defeat the provisions of section 25-F of the Industrial Disputes Act, 1947. Thus, having regard to the entire evidence on record and in view of the fact that the petitioner has completed 328 working days before his termination was affected and his termination without notice under section 25F of Industrial Disputes Act, 1947 is illegal. Accordingly issue no.1 is decided in favour of the petitioner and against the respondent.

Issue No.2

15. Since I have held under issue no.1 above, that the services of the petitioner has been illegally terminated by the respondent without notice or payment of compensation, hence the petitioner is held entitled to reinstatement in service with seniority and continuity from the date of illegal retrenchment. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Accordingly, issue no.2 is decided in favour of petitioner and against the respondent.

Issue No.3.

16. In order to prove this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However I find nothing wrong with this claim of the petitioner which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity in service. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination and as such the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 19th August, 2009 in the presence of parties counsels.

(Parveen)

J.S MAHANTAN,
*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.

Ref. No. 356 of 2003.
Instituted on. 26.12.2003.
Decided on. 19.8.2009.

Bhoop Singh S/o Shri Alam Singh R/o Village Deori, P.O Katwach, Tehsil Neri, District Mandi, HP.

Petitioner.

Versus

Regional Manager, HRTC, Rural Unit Dhalli, Shimla 171002, HP.

Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri M.L Sharma, Ld. Csl.

For respondent: Shri Rajesh Verma, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of services of Shri Bhoop Singh S/o Shri Alam Singh, Chowkidar by the Regional Manager, HRTC, Rural Unit, Dhalli Shimla 171002 w.e.f. 19.4.2001 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, Shri Bhoop Singh is entitled to?”

2. The petitioner has filed a separate claim asserting therein that he was engaged as Chowkidar on contract basis by the respondent @ Rs. 1,000/- per month w.e.f. 1.5.1998 as is evident from the letter dated 8.7.1998 and that since then the petitioner was performing his duties as Chowkidar as is evident from the letter dated 19.8.1998, 20.10.1999 and 18.11.2000 and that in March, 2001 the petitioner was called upon to execute an agreement for engagement on contractual basis for 89 days w.e.f. 21.1.2001 to 19.4.2001 @ of Rs. 2000/- per month and that against the termination, the petitioner approached the Administrative Tribunal which was dismissed on the ground of jurisdiction and that the oral termination of the petitioner w.e.f. 30.4.2001 is wrong, illegal, arbitrary and against the facts and materials on record which is contrary to the law laid down by the Hon'ble Supreme Court and that the oral termination of the petitioner cannot sustain in the eyes of law which is in violation of section 25F of the Industrial Disputes Act, 1947, who had completed 240 days in preceding twelve calendar months prior to his retrenchment and that the termination of the services of the petitioner is violative of Articles 14, 16 and 21 of the Constitution of India as the petitioner has been thrown on the road for starvation and that the petitioner is ready and willing to perform his duties as the work and funds are available with the respondent but its officials have terminated the services of the petitioner and as such prayed that the oral termination of the services of the petitioner w.e.f. 20.4.2001 be held wrong, illegal, arbitrary and violative of Articles 14, 16 and 21 of the Constitution of India and that the petitioner be held to be in continuous

service of the respondent with all consequential benefits, reinstatement and regularization, hence this claim.

3. The respondent resisted and contested the claim of petitioner, which filed reply interalia raising preliminary objections of maintainability and that the petitioner was employed on contract basis. On merits, it is contended that the petitioner was engaged as Chowkidar on contract basis for a specific period of 89 days w.e.f. 1.5.1998 at a fixed salary of Rs. 600/- per month on part time for six hours daily. It is denied that the petitioner was receiving a salary of Rs. 1000/- per month from 19.8.1998. It is contended that the salary of the petitioner was increased to Rs. 1000 from 1.8.1999 and that an agreement was executed between the petitioner and HRTC for the engagement of the petitioner on contract basis for a period of 89 days @ Rs. 2000/- per month and that the services of the petitioner were dispensed with on the basis of terms and conditions of his appointment letter/contract. It is denied that the petitioner had completed 240 days in any of the preceding twelve calendar months of calendar year as his appointment was made for a specific period of 89 days and as such the petitioner is not entitled to the benefits as envisaged under section 25F of the Industrial Disputes Act, 1947 and that there is no violation of the Articles 14,16 and 21 of the Constitution of India and that the respondent has got no work and funds as alleged by the petitioner as the respondent is running in huge losses and is finding it difficult even to pay the salaries of its regular employees and as such prayed for the dismissal of claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 21.12.2005.

1. Whether the services of the petitioner has been illegally terminated by the respondent?
If so, its effect?

OPP.

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to?

OPP.

3. Whether the present petition is not maintainable?

OPR.

4. Relief.

6. I have heard the learned counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues area as under.

Issue no.1 No.

Issue no.2 Not entitled to any relief.

Issue no.3 No.

Relief. Reference answered in negative per operative part of award.

REASONS FOR FINDINGS

Issue No.1

8. Coming to issue no.1, the petitioner has examined himself as PW-1, who has stated on oath that he was engaged as Chowkidar at Karsog Depot, where he worked day and night till 30.4.2001 and the department was giving him one day break after 89 days but the work was taken on the day of break. He had worked for more than 240 days in a year and the respondent was taking the mechanical work from him. No notice nor compensation was paid to him at the time of his removal and as such prayed for reinstatement with all benefits and he is doing agricultural work at his village.

9. To rebut the case of the petitioner, the respondent examined Shri Jagmohan Chauhan, Senior Assistant HRTC Dhalli, who has stated that the petitioner was engaged as part time Chowkidar at the fixed salary of Rs. 600/- for a period of 89 days on 1.5.1998, who used to be reengaged as per requirement from time to time, who worked lastly on 19.4.2001 and the petitioner was engaged vide agreements Ex. RA to Ex. RA4 and the petitioner was engaged for specific period and for specific work and no work is now available with the respondent for petitioner. The petitioner has not completed 240 days in any calendar year in order to take the benefits of section 25F of the Industrial Disputes Act, 1947.

10. \The case of the petitioner is that he being a Chowkidar having worked for more than 240 days and his termination without notice and compensation is illegal and as such he is entitled for the protection of section 25-F of the Industrial disputes Act, 1947.

11. On the contrary, the respondent contends that the petitioner is not entitled to any benefits under the Industrial Disputes Act, 1947 as he was engaged on contract basis for 89 days only and the contract was repeated from time to time for 89 days and even the petitioner has not completed 240 working days in any calendar year at the time of his termination.

12. I have considered the respective contention of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, there is no dispute about the appointment of the petitioner as part time Chowkidar, who was appointed as Chowkidar by the respondent on 1.5.1998 and worked till 19.4.2001 with fictional breaks. It is also clear that the petitioner was appointed as part time Chowkidar on contract basis for 89 days which was renewed from time to time as is evident from Ex. RA1 to Ex. RA4 placed on record. No doubt, the petitioner has tried to establish on record that he had put in 240 working days in a twelve calendar months preceding his termination by working full time in a day but the petitioner has failed to prove that he had put in 240 working days in twelve calendar months preceding his termination, hence the case of the petitioner does not fall under section 25-F of the Act. It is also borne out from the record that the petitioner has obtained the information from the respondent under the Right to Information Act but the petitioner has failed to prove on record that he had worked for 240 working days with the respondent in twelve calendar months preceding his termination. It is well settled that where the workman has not produced any evidence to show that he had worked for more than 240 working days preceding his termination and that no evidence has been led in order to show that his juniors are still working with the respondent, the petitioner is not entitled to any protection under the provisions of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordships of Hon'ble Supreme Court in AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh in which it was held that:

“In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has

worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced; no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."

14. Thus, on the strength of the above cited rulings and having regard to the entire evidence on record and the fact that the petitioner has not completed 240 working days in twelve calendar months preceding his termination, hence it can safely be concluded that the services of the petitioner have been legally terminated by the respondent without complying with the provisions of section 25F of the Industrial Disputes Act, 1947 as the petitioner had not completed 240 working days in twelve calendar months preceding his termination and as such the petitioner is not entitled to the protection of section 25F of the Industrial Disputes Act, 1947. Accordingly, this issue is decided in favour of the respondent and against the petitioner.

Issue No.2

15. Since I have held under issue no.1 above, that the service of the petitioner has not been illegally terminated by the respondent without notice or payment of compensation, hence the petitioner is not entitled to any relief as claimed by him. Accordingly, issue no.2 is decided in favour of the respondent and against the petitioner.

Issue No.3.

16. In order to prove this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However I find nothing wrong with this claim of the petitioner which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 19th August, 2009 in the presence of parties counsels.

(Parveen)

J.S MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

Ref.26/2009

20.8.2009

Sardar Sohan Singh V/s M/s Cine Sound Services, Shimla-1

20.8.2009:

Present:- Petitioner with Shri B.S.Thakur, Ld.Csl for petitioner.
Respondent in person with Shri Satyvrata Sharma, Ld. Csl for respondent.

Hears, It is a fit case for conciliation. The case stands compromised. Let the statement of the petitioner be recorded on oath.

Statement of Shri Sohan Singh S/o Shri Chanan Singh aged 69 years R/o Anant Niwas, Rudibatha Shimla-1

O.S.A
20.8.2009

Stated that I have received a sum of Rs.71,000/- (Rs. Seventy One thousand only) by way of Cheque of J&K Bank from the respondent Shri Gopal Singh being full & final settlement, subject to encashment of Cheque and as such my claim be dismissed as satisfied.

R.O.&A.C

*Presiding Judge,
Labour Court, Shimla.*

Statement of the petitioner recorded separately. In view of his statement, the claim of the petitioner is dismissed as satisfied as a result of which the reference is answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to recods.

Announced:
20.8.2009

Sd/-
*Presiding Judge,
Labour Court, Shimla.*

Ref.67/2007

20.8.2009

Sh Vipin Kumar V/s M.D.M/s Khaitan Manufacturing Co Baddi.

20.8.2009:-
Present:- None.

It is 11.45 AM but none appeared on behalf of the parties. Be awaited.

*Presiding Judge,
Labour court, Shimla.*

20.8.2009:-
Present:- None.

It is already 3.30.PM. Case called out again but none appeared on behalf of the parties. Case called pre and post lunch sessions but no appearance put in by the parties. It seems that the parties have not interested to persue their case, hence the claim of of the petitioner is dismissed for non prosecution and as such the reference is ordered to be answered accordingly. Let a copy of this

order be sent to the appropriate government for publication in the official gazette. File , after completion , be consigned to records.

Announced:
20.8.2009

Sd/-
Presiding Judge,
Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.

Ref no. 10 of 2001.
Instituted on 26.2.2001.
Decided on. 20.8.2009.

Rajinder Kumar S/o Shri Ram Lochan C/o Shri D.R Mehta, R/o Village Sadhora, P.O Baldiyan, Tehsil & District Shimla, HP.

Petitioner.

Vs.

Resort Manager, Koti Resorts, Ltd. Sadhora, P.O Baldiyan, Tehsil & District Shimla, HP.

Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri S.D Sharma, Ld. Csl.

For respondent: Shri Arvind Sharma, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:-

“Whether the termination of services of Shri Rajinder Kumar ex-plumber by the Resort Manager, Koti Resort Ltd., Sadhora, P.O Baldiyan, Tehsil & District Shimla, HP w.e.f. 5.7.1998 without any notice, charge sheet, enquiry and without compliance of section 25F of the Industrial Disputes Act, 1947 as alleged is justified and maintainable. If not, to what relief of consequential service benefits and amount of compensation, Shri Rajinder Kumar is entitled?”

2. The petitioner has filed a claim asserting therein that the petitioner was employed as plumber in the respondent establishment in October, 1988 and continued to work as such till 15th July, 1998 and that the petitioner was terminated from service vide letter dated 5.7.1998 which is illegal, void and inoperative in the eyes of law and that the termination order is based on the misconduct without having been proved as the termination order cast stigma which involves civil consequences and could not have been legally done without hearing the petitioner and that the

petitioner was not given any opportunity to explain his conduct as no charge sheet was served nor any enquiry was held against the petitioner and even the petitioner has been condemned unheard, hence the termination order is bad in law and is liable to be set aside and that the purported termination amounts to retrenchment which has been resorted to without giving any notice for retrenchment and paying the compensation and as such prayed for reinstatement in service alongwith all consequential benefits including seniority and continuity, hence this claim.

3. The respondent resisted and contested the claim of the petitioner which filed reply interalia raising preliminary objections of maintainability and the petitioner does not fall under the definition of workman under the provisions of Industrial Disputes Act and abandoned the job himself. On merits, it is contended that the petitioner was working as plumber with the respondent. It is denied that the petitioner was working since 1988, who received his full & final settlement from the respondent on 19.7.1998 in respect of his service and that the letter dated 5.7.1998 was issued to the petitioner in respect of his illegal and arbitrary conduct in the respondent resort. It is contended that the petitioner had left the job of his own, who was doing the service in the construction of Mr. Bhatia and the petitioner had settled his service benefits and that the letter dated 5.7.1998 clearly shows the conduct and acts of the petitioner and that the dispute between the petitioner and respondent was fully settled on 19.7.1998 when the petitioner received his full & final payment as per his wishes and consent and as such prayed for the dismissal of the claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 3.1.2005 on the pleadings of the parties:

1. Whether the termination of the petitioner by the respondent w.e.f. 5.7.1998 without any notice, charge sheet, enquiry and without compliance of section 25F of the I.D Act, 1947 as alleged is justified?

OPR.

2. If issue no.1 is not proved, to what relief of service benefits including reinstatement, back wages, seniority and amount of compensation, the petitioner is entitled to?

OPP.

3. Whether the petition is not maintainable as alleged in preliminary objection no.1?

OPR.

4. Whether the petitioner does not fall within the definition of workman as alleged in preliminary objection no.2?

OPR.

5. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1.	No.
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Issue no. 2.	Entitled to reinstatement with seniority and continuity but without back wages.
Issue no.3.	No.
Issue no.4.	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No.1

8. Coming to this issue, the petitioner has examined two PWs in all. The petitioner stepped into the witness box as PW1, who has stated that he was engaged by the respondent on 19.10.1988 as plumber and he was getting Rs. 3,000/-, who applied for the leave on 30.6.1998 till 15.7.1988 vide application Ex. PA and when he had gone to join the duties, he was informed by the Deputy Manager that his services stood terminated. No notice nor any enquiry was conducted before his removal. No retrenchment compensation was paid to him and an experience certificate mark X was given to him by the respondent and earlier the case regarding his wages filed in this Court was decided on 29.7.2002, copy of which is Ex. PB and as such prayed that his petition be allowed.

9. PW2 Shri Kamal Kishore, Clerk Labour Court, Shimla has brought the original court file of App. 53/1999 and proved the original certificate Ex. PC.

10. To rebut the case of the petitioner, the respondent has examined two RWs in all. RW1 Shri Mohinder Sharma has tendered his affidavit Ex. RA alongwith registration certificate Ex. RB and payment receipt Ex. RC stating there in that the resort was opened in the year 1992 and was registered with department of Tourism vide registration no. 8-5/92 paryatan 1355 dated June, 1992 for 12 double bed rooms and 12 family suits and that the petitioner was working as a plumber with the respondent since 1992 @ Rs. 2400/- per month and that the petitioner left the job in the year June, 1998 without any leave or information and started working with Mr. Bhatia and that the petitioner was called several times to join his duties but the petitioner failed to join his duties, who came to the resort on 19th July, 1998 to settle his full and final account with the respondent and then the petitioner left the job of his own.

11. RW2 Shri Hem Raj tendered his affidavit Ex. RD in which he supported the entire version of RW1.

12. The case of the petitioner is that he being the plumber of the respondent having worked for more than 240 days in each calendar year was illegally terminated from service without notice and compensation and even no charge sheet nor any domestic enquiry was ever conducted against him at any point of time by the respondent and as such he is entitled for reinstatement in service with all consequential benefits.

13. On the contrary, the respondent contends that the petitioner was never terminated from service by the respondent, who left the job of his own without any intimation to the respondent department and even the petitioner had settled his full and final account with the respondent, hence the petitioner is not entitled to any relief as claimed by him.

14. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

15. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged by the respondent as plumber and worked with the respondent till 15.7.1998 which fact is not disputed by both the parties. No doubt, the respondent has tried to establish on record that the petitioner was engaged in the year 1992 as the resort was opened in the year 1992 and was registered with the department of Tourism but it remains a fact that when RW2 Hem Raj appeared in the witness box has admitted that he is working with Koti Resorts since 1987 or in other words, he has been working with the respondent prior to its registration which fact clearly goes to show that the respondent has tried to conceal the true facts about the engagement of the petitioner. It is also the admitted case that the petitioner had proceeded on leave in June, 1998 and returned in July, 1998, when his services were terminated by the respondent without holding any domestic enquiry nor any charge sheet was framed against him by the respondent even if the petitioner was at fault with the respondent and even the respondent has failed to prove on record that they had afforded the ample opportunity to the petitioner to defend his case which is against the principle of natural justice as the petitioner had worked for more than 240 days in every calendar year till his illegal retrenchment and obviously therefore, I have no hesitation in coming to the conclusion that the termination of the services of the petitioner by the respondent w.e.f. 5.7.1998 without any notice, charge sheet, enquiry and without compliance of section 25F of Industrial Disputes Act, 1947 is illegal, unjustified and not maintainable and is liable to be set aside and quashed. Accordingly issue no.1 is decided in favour of petitioner and against the respondent.

Issue No.2

16. Since I have held under issue no.1 above that the services of the petitioner have been illegally terminated by the respondent w.e.f. 5.7.1998 without any notice, chargesheet, enquiry and without compliance of section 25F of the Industrial Disputes Act, 1947, hence the petitioner is held entitled to his reinstatement in service alongwith seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of petitioner and against the respondent.

Issue No.3

17. In support of this issue, no evidence was led by the respondent being the legal issue. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondent.

Issue No.4

18. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However, I have scrutinized the record of the case and observed that the petitioner being a plumber of the respondent is a workman within the meaning of section 2(s) of the Industrial Disputes Act, 1947 having no supervisory powers whose work is to look after and set right the drinking water pipe line and sewerage line and to set right the taps and the bathrooms of the Hotel being the plumber. Accordingly, issue no.4 is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issue no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service from the date of his illegal retrenchment forthwith with seniority and continuity. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate

that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 20th August, 2009 in the presence of parties counsels.

(Parveen)

J.S MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.

Ref no.6 of 2006.
Instituted on 26.2.2006.
Decided on. 20.8.2009.

Jai Ram S/O Shri Shobhu Ram R/o Village Dharauli, P.O Khagna, Tehsil Chopal, District Shimla, HP.

Petitioner.

Vs.

The Executive Engineer, I&PH Division Nerwa, Tehsil Chopal, District Shimla, HP.

Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Ms. Ritu Chauhan, Ld. Csl.

For respondent : Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:

“Whether the termination of services of Shri Jai Ram S/o Shri Shobhu Ram workman by the Executive Engineer, I&PH Division Nerwa, District Shimla HP w.e.f. 26.2.1996 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. The petitioner has filed a claim asserting therein that the petitioner was initially engaged as beldar on 20.7.1995 and muster roll to that effect was issued in his name by the

Executive Engineer, I&PH Division Nerwa and that the petitioner worked in the various places under respondent and that the services of the petitioner were disengaged by the respondent department orally during December, 1995 and the petitioner having felt aggrieved against the termination order filed a writ petition before the Hon'ble High Court alongwith other petitioners which was decided on 4.1.1996 and that the respondent department again reengaged the petitioner alongwith six other petitioners during Jan. 1996 after the decision of the Hon'ble High Court and that the services of the petitioner was again disengaged w.e.f. 26.2.1996 without issuing any notice which was required under the provisions of Industrial Disputes Act, 1947 and the petitioner alongwith five persons again filed CWP no. 657/1996 before the Hon'ble High Court which was dismissed on 9.9.1996 and that in the month of July, 1997 four persons S/Shri Jagdish Chand, Jai Ram, Lalit Mohan and Mukh Ram served a demand notice upon the respondent and the conciliation proceedings were carried before the Labour-cum-Conciliation Officer Shimla and the then Executive Engineer admitted that in a near future, the workmen will be given daily wages employment keeping inview their job rendered for the year 1995-96 and then the said workmen were reengaged during the year 1998 vide settlement dated 14.9.1998 and then the petitioner approached the Executive Engineer and also other officials for his reengagement but to no avail and then the petitioner filed an O.A before the Administrative Tribunal which was dismissed on the ground of jurisdiction and then the petitioner submitted demand notice on 21.4.2003 upon the respondent and that the petitioner had completed 240 working days prior to the order of disengagement i.e. 26.2.1996 and that the respondent had reengaged the similar situated persons after the conciliation proceedings and also engaged the junior person Shri Mukh Ram, who was engaged on 29.7.1995 whereas the petitioner was engaged on 26.7.1995 and that the sufficient work is available with the respondent department and that the petitioner was orally terminated on 26.2.1996 without complying the mandatory provisions of sections 25F and 25G of the Industrial Disputes Act, 1947 and that the action of the respondent is illegal and unjustified and as such prayed for reinstatement w.e.f. 26.2.1996 alongwith seniority and all consequential benefits, hence this claim duly supported by an affidavit.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections that the petitioner has no locus standi to file the petition, bad for want of better material particulars, being time barred and non maintainability. On merits, it is contended that the petitioner had initially worked as beldar on muster roll basis w.e.f. 26.7.1995, who worked only for 99 days in 1995 and 43 days in 1996, who had not completed 240 days in each calendar year or preceding twelve calendar months. It is admitted that before the conciliation officer in 1988, four persons S/Shri Jagdish Chand, Jai Ram, Lalit Mohan and Mukh Ram were reengaged on the availability of work as they approached for work but the petitioner did not approach at that time. It is also contended that as per law, the seniority of those persons is maintained, who completed 240 days in a calendar year and not the others, hence there is no question of junior and senior especially when they have not completed 240 days and since the petitioner is approaching this court after eight years as such under the law, he is not entitled to unsettle the settled issue at this belated stage. It is denied that the petitioner had approached the respondent for his reengagement, who remained silent for years together and as such prayed for the dismissal of the claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 28.5.2007 on the pleadings of the parties:

1. Whether the services of the petitioner have been illegally terminated without complying with the provisions of Industrial Disputes Act, 1947 by the respondent? If so, its effect?

OPP.

2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to?

OPP.

3. Whether the petitioner has no locus standi and the petition is barred by limitation?

OPR.

4. Relief.

6. I have heard the Ld. counsel for the petitioner and Ld. DDA for the respondent and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1.	Yes.
Issue no. 2.	Entitled for reinstatement in service with seniority and continuity but without back wages.
Issue no.3.	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No.1

8. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged as beldar on daily wages with I&PH Sub Division, Nerwa on 26.7.1995 where he worked till 26.12.1995 and then he was removed from service. No notice nor compensation was paid to him at the time of his removal. On July, 1996, he alongwith others preferred a writ before the Hon'ble High Court which was allowed. He was reengaged for one month and then he was removed from service on 26.2.1996 and then he approached the Administrative Tribunal where his petition was dismissed for want of jurisdiction. He requested his officers for his reengagement but in vain. His juniors and colleagues S/Shri Jagdish, Lalit Mohan, Jai Ram and Mukh Ram are still working with the respondent and Mukh Ram is junior to him, who was reengaged on 29.7.1995 and as such prayed for reinstatement with all consequential benefits including back wages and he had not completed 240 working days in a calendar year preceding his termination.

9. To rebut the case of the petitioner, the respondent has examined RW1 Er. Rakesh Chandel, Assistant Engineer, IPH Sub Division, Chopal, who has stated that the petitioner was engaged as daily wages beldar on 26.7.1995 at IPH Sub Division Chopal and worked as such till 25.2.1996 and then the petitioner was disengaged from service on the completion of special repairs alongwith other workmen and the petitioner did not complete 240 working days in a calendar year 1996, who had worked for 142 days in toto. S/Shri Jagdish Chand, Mukh Ram, Lalit Mohan and Jai Ram were also terminated from service alongwith the petitioner. The above named workmen raised a dispute before the Labour-cum-Conciliation Officer, Shimla on 14.9.1998 upon which they were reengaged on the availability of work on 26.12.1997 giving them seniority since 26.12.1997 and only Mukh Ram is junior to the petitioner for three days, who was engaged on the same muster roll when the petitioner was working and they did not maintain the seniority of a workman unless and until he completes 240 working days in a calendar year. The petitioner has not approached the department for his reengagement at any point of time. The petitioner had also filed an O.A before the Administrative Tribunal which was dismissed and proved the mandays chart of the petitioner Ex. RA and the first muster roll of the petitioner is Ex. RB and other muster rolls are Ex. RC to RG and the reply filed before the Labour-cum-Conciliation Officer, Shimla is Ex. RH and as such the claim of the petitioner is false.

10. The case of the petitioner is that he being the daily wages beldar was illegally terminated from service after completing more than 240 working days in a calendar year preceding his termination without notice and compensation which is illegal and even Shri Mukh Ram, junior to him is still working with the respondent department and as such he is also entitled for reinstatement in service with all consequential benefits.

11. On the contrary, the respondent contends that the petitioner was engaged for specific work for specific purpose and on the completion of the work, the services of the petitioner were disengaged and thereafter the petitioner never approached the respondent for his reengagement, hence the petitioner is not entitled to any relief.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remain a fact that the petitioner was engaged as daily wages beldar by the respondent department on 26.7.1995, who continued as such till 25.2.1996. It is also fully proved on record that the petitioner has not completed 240 working days in twelve calendar months preceding his termination. No doubt that the petitioner has tried to establish on record that he had completed more than 240 working days in a calendar year preceding his termination but there is nothing on record which could show that the petitioner had worked for 240 working days with the respondent preceding his termination, hence the case of the petitioner does not fall under section 25F of the Industrial Disputes Act, 1947.

14. Now turning to the other aspect of the case, it is also pointed out that Shri Mukh Ram, junior to the petitioner is still working with the respondent department which fact has also been admitted by RW1 Er. Rakesh Chandel, who has tried to justify on record that Mukh Ram is only three days junior to the petitioner, who was engaged on the same muster roll having been issued for the petitioner. Now, it is clear from the evidence on record that the respondent department has violated the provisions of section 25G & H of the Industrial Disputes Act, 1947 as no letter was issued to the petitioner to resume his duties nor any notice regarding his employment was sent to the petitioner by the respondent department which is against the principle of first come last go which also amounts to unfair labour practice. Here I am fortified with a view taken by their lordships of Hon'ble Supreme Court incase titled as State of Haryana Vs. Dilbag Singh reported in 2007 LLR 72 SC in which it was held that :

“Where Labour Court found that person junior to respondent was still working and thus there was breach of section 25-G & 25-H of the Act. Court directed reinstatement with 50% back wages.”

Similarly, our own Hon'ble High Court of HP has held incase titled as State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903. in which it was held that :-

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

15. Thus, having regard to entire evidence on record and inview of the fact that Shri Mukh Ram, junior to the petitioner is still working with the respondent as admitted by RW1 Er. Rakesh Chandel and as such I have no hesitation in coming to the conclusion that the junior to the petitioner is still working with the respondent department and as such the termination of services of petitioner by the respondent without complying with the provisions of Industrial Disputes Act,

1947 is improper and unjustified as the respondent has violated the principle of first come last go and also violated the provisions of sections 25G & H of the Industrial Disputes Act, 1947. Accordingly issue no.1 is decided in favour of petitioner and against the respondent.

Issue No.2

16. Since I have held under issue no.1 above that the termination of services of the petitioner by the respondents without following with the provisions of Industrial Disputes Act, 1947 is improper, illegal and unjustified, hence the petitioner is held entitled to reinstatement in service alongwith seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided against the respondent and in favour of the petitioner.

Issue No.3

17. In support of this issue, no evidence was led by the respondent being the legal issue. However, I have scrutinized the record of the case and observed that the petitioner being daily wages beldar and the junior to the petitioner is still continuing with the respondent, who was illegally terminated from service without any basis, hence being aggrieved has got locus standi to file this petition and there is no limitation under the I.D Act as it was held by their lordships of **Hon'ble Supreme Court as reported in (1999) 6 SCC 82 case titled as Ajayab singh Vs. Sirhind Co-operative Marketing –cum- Processing Service Society Limited and Another in which it was held that:**

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

Thus, on the strength of this ruling, it can safely be concluded that this petition is not barred by limitation and the petitioner has got locus standi to file this petition. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 21st August, 2009 in the presence of parties counsels.

(Parveen)

J.S MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.

Ref no. 258 of 2003.
Instituted on 10.9.2003.
Decided on. 25.8.2009.

Ram Asra S/o Shri Ram Singh R/o Village Chaina, P.O Dhalli, Shimla-12, H.P.

Petitioner.

Vs.

The Commissioner, Municipal Corporation, Shimla-1, HP.

Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Satyen Vaidya, Ld. Csl.

For respondent: Shri Sandeep Dutta, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:

“Whether the termination of services of Shri Ram Asra daily wages beldar by the Commissioner, Municipal Corporation, Shimla-171001 w.e.f. 21.12.2001 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, Shri Ram Asra is entitled to?”

2. The petitioner has filed a claim asserting therein that the petitioner worked as a workman in the capacity of beldar in the employment of the respondent continuously w.e.f. 21.10.2000 to 3.12.2001, who had completed 240 days continuously in one year in the employment of the respondent and that the petitioner always worked to the best of his ability and to the satisfaction of the employer and that the petitioner was not allowed to join the work w.e.f. 4.12.2001 by the respondent and the muster roll was not issued. The work was sufficiently available with the respondent but the petitioner was retrenched without any reason and that the petitioner has been retrenched by the respondent without complying with the mandatory provisions of section 25F of the Industrial Disputes Act, 1947 and that in place of the petitioner some other persons are doing the same job which was being performed by the petitioner and that the retrenchment of the petitioner is wrong, illegal and in violation of the provisions of Industrial Disputes Act, 1947 and as such prayed for reinstatement with full back wages and all consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner which filed reply interalia raising preliminary objections of maintainability, having no cause of action and barred by limitation. On merits, it is denied that the petitioner worked as beldar in the employment of the respondent continuously w.e.f. 21.10.2000 to 3.12.2001. It is contended that the petitioner was

engaged as beldar on daily wages w.e.f. 31.10.2000 to 20.7.2001. It is also denied that the petitioner had completed 240 days continuously in one year in the employment of the respondent, who had worked only for 50 days during the year 2000 and 146 days during the year 2001 and that the petitioner had left the job of his own. It is denied that the petitioner was retrenched by the respondent without complying the provisions of Industrial Disputes Act, 1947, who had left the job of his own and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 4.3.2005 on the pleadings of the parties:

1. Whether the termination of services of the petitioner by respondent w.e.f. 21.12.2001 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified?

OPR.

2. If issue no.1 is not proved, to what relief of service benefits and amount of compensation, the petitioner is entitled to?

OPP.

3. Whether the claim of the petitioner is not maintainable in the present form as alleged?

OPR.

4. Whether there is no cause of action in favour of petitioner as alleged?

OPR.

5. Whether the statement of claim is barred by limitation?

OPR.

6. Whether the petitioner left the job of his own?

OPR.

7. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1. No.

Issue no. 2. Entitled to reinstatement with seniority and continuity but without back wages.

Issue no.3. No.

Issue no.4. No.

Issue no.5. No.

Issue no.6. No.

Relief. Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No.1

8. Coming to this issue, the petitioner has examined two PWs in all. PW1, Shri Prithvi Singh Verma, Labour Inspector-cum-Conciliation Officer, Shimla has proved the copy of demand notice Ex. PW1/A and on the basis of the claim received from workman, the office issued notice to the respondent which is Ex. PW1/B and the reply filed by the respondent is Ex. PW1/C and the rejoinder of the petitioner is Ex. PW1/D.

9. Petitioner Shri Ram Asra appeared into the dock as PW2, who has stated that he worked as beldar in the employment of respondent continuously w.e.f. 21.10.2000 to 3.12.2001, who had completed 240 days employment during above period, who always worked to the best of his ability and satisfaction of his employer and he was asked on 4.12.2001 not to resume his duties and the work was available with the respondent but he was retrenched without any reason and before this retrenchment, no notice was issued to him by the respondent nor other provisions of section 25F of the I.D Act were complied with viz the salary in lieu of notice or the retrenchment compensation was not offered or paid to him and after his retrenchment, the respondent had employed many persons as beldar without offering him the job. He has been illegally terminated by the respondent and as such prayed for reinstatement in service alongwith all consequential benefits including full back wages, continuity and seniority in service.

10. To rebut the case of the petitioner, the respondent has examined RW1 Er. Ajit Kumar, who has stated that the petitioner was engaged on 31.10.2000 to 20.7.2001 as per muster roll on daily wages and proved the mandays chart of the petitioner Ex. RA and the petitioner worked only for 50 days in 2000 and 146 days in 2001. The petitioner abandoned the job on 20.7.2001, who never completed 240 days, who has not been removed from service by anybody but he left the job of his own, hence the petitioner is not entitled to any relief.

11. Ld. Counsel for the petitioner has vehemently argued at the very out set that the petitioner has completed 240 working days in a calendar year preceding his termination. He has drawn the attention to this Court to the reply of respondent filed before the Conciliation Officer, Shimla vide which the respondent has admitted that the petitioner has completed 235 days in the year 2001 but this reply has been contradicted by the mandays chart filed by the respondent alongwith its reply vide which the petitioner is shown to have completed 233 days from 31.10.2000 to 30.10.2001. He has urged that when the petitioner applied for information under the Right to Information Act, 2005, the respondent had issued the letter vide which it was informed that the petitioner had worked for 19 days w.e.f. 21.7.2001 to 20.8.2001 and as such the petitioner has completed 252 days in a calendar year preceding his termination and as such the case of the petitioner squarely falls under section 25F of the Industrial Disputes Act, 1947 as no notice nor compensation was paid to the petitioner at the time of his termination.

12. On the contrary, Shri Sandeep Dutta Ld. Csl. for the respondent has controverted the arguments of the Ld. Counsel for petitioner and has submitted that the petitioner has not completed 240 working days in a twelve calendar months preceding his termination, hence the petitioner is not entitled to any relief as prayed by him.

13. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, it remains a fact that the respondent has appended the mandays chart of the petitioner alongwith the reply which clearly shows that the petitioner has completed 233 working days from 31.10.2000 to 31.10.2001 and thereafter when the

petitioner sought the information under the Right to Information Act, 2005 from the respondent in which it was informed that the petitioner has also completed 19 days over and above 233 days i.e from 21.7.2001 to 20.8.2001 and if these days are added, it comes to 252 days. It is also borne out from the record that no notice nor compensation was paid to the petitioner at the time of his termination and as such it is clear that the petitioner has completed 252 working days in twelve calendar months preceding his termination. Moreover, **Section 25-F of the 'Act' says that:**

25-F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- a) **the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;**
- b) **the workman has been paid, at the time of retrenchment compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and**
- c) **notice in the prescribed manner is served on the appropriate government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)**

15. In the instant case, the respondent has failed to comply with the provisions of section 25F properly which has not served the legal notice upon the petitioner nor upon the appropriate government by notification in the official gazette as envisaged under section 25F © of the Industrial Disputes Act, 1947, hence the case of the petitioner squarely falls under section 25F of the Industrial Disputes Act, 1947 and as such I have no hesitation in coming to the conclusion that the termination of services of the petitioner by the respondent w.e.f. 21.12.2001 without complying the provisions of Industrial Disputes Act, 1947 is improper and unjustified. Accordingly, issue no.1 is decided in favour of the petitioner and against the respondent.

Issue No.2

16. Since I have held under issue no.1 above that the services of the petitioner have been illegally terminated by the respondent without following the proper procedure of Industrial Disputes Act, 1947, hence the petitioner is held entitled to reinstatement in service with seniority and continuity from the date of his illegal termination. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of petitioner and against the respondent.

Issue No.3

17. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However, I find nothing wrong with this claim of the petitioner which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondent.

Issue No. 4

18. In support of this issue, no evidence was led by the respondent nor pressed during the course of arguments. However, I have scrutinized the record of the case and observed that the petitioner being aggrieved from the termination order of respondent has got enforceable cause of action in his favour to file this petition. Accordingly, issue no.4 is decided in favour of the petitioner and against the respondent.

Issue No. 5

19. In support of this issue no evidence was led by the respondent nor it was pressed during the course of arguments. However, I have scrutinized the record of the case and observed that there is no limitation under the I.D Act as it was held by their lordships of *Hon'ble Supreme Court as reported in (1999) 6 SCC 82 case titled as Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another in which it was held that:-*

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Thus, on the strength of this ruling, it can safely be concluded that the claim of the petitioner is not barred by limitation. Accordingly, issue no.5 is decided in favour of the petitioner and against the respondent.

Issue No. 6

20. In support of this issue, the respondent has failed to prove on record that the petitioner had abandoned the job of his own as there is nothing on record which could show that the petitioner himself is responsible for loosing his job as no letter/notice was issued to the petitioner by the respondent to resume his duties. Moreover, it is well settled incase titled as *State of HP & Others Vs. Bhagat Ram & Another as reported in latest HLJ 2007 (HP) 903* in which it was held that:

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

Thus, having regard to no evidence on the point of abandonment, it can safely be concluded that the petitioner has not left the job of his own, who was orally terminated from service by the respondent without complying with the provisions of Industrial Disputes Act, 1947. Accordingly, issue no.6 is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issue no.1 to 6, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service from the date of his illegal retrenchment forthwith with seniority and continuity. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 25th August, 2009 in the presence of parties counsels.

(Parveen)

J.S MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

Ref 138/2002

Sh Bhag Singh V/s Ex.Engg.HP State Industrial Development Corp., Baddi

31.8.2009

Present:- Sh J.L. Sharma, Ld, Csl for petitioner.
Sh. Subhash Sharma, Ld. Csl for respondent.

Heard. This case is taken up today as the exparte award dated 30.3.2009 is set-aside vide my separate order announced today. Ld Counsel for the respondent submit at the bar that the case stands compromised. Let the statement of Ld. Counsel for respondent be recorded.

Statement of Shri Subhash Sharma, Ld Counsel for respondent

31.8.2009
W.O.

Stated that the respondents are ready to reengage the petitioner in service with seniority and continuity but without back wages and as such the petitioner can join his duties within a week from today, hence the claim of the petitioner may be decided accordingly.

R.O&A.C

Presiding Judge,
Labour Court, Shimla.

Statement of Shri Bhag Singh s/o Shri Robbal Singh aged 36 years, R/oVillage Doduwal,Tehsil Nalagarh, Distt SolanHP.

On S.A
31.8.2009

Stated that I have heard and understood the statement of Ld.Counsel for respondent which is acceptable to me and as such my claim may be decided accordingly.

R.O.& A.C

Through Counsel

Presiding Judge
Labour Court, Shimla.

Statement recorded separately. In view of Statements, I am satisfied that the parties have arrived at lawful compromise I am also satisfied that the petitioner has made the statement voluntarily without any extraneous influence upon him. Accordingly, the claim of the petitioner is decided as compromised and as such the petitioner is ordered to be reinstated forthwith seniority and continuity but without back-wages. Let a copy of this award be sent to the appropriate Govt for publication in official gazette. File, after completion, be consigned to records.

Announced
31.8.2009

*Presiding Judge
Labour Court, Shimla.*

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.

Ref no. 131 of 2006.
Instituted on 16.10.2006.
Decided on. 31.8.2009.

Narinder Kumar, S/o Shri Mohan Lal R/o Village Basara, P.O Kartot, Tehsil Rampur Bushahr, District Shimla, HP.

Petitioner.

Vs.

The Senior Executive Engineer, Electrical Division, HPSEB, Rampur Bushahr, District Shimla, HP.

Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri P.P Chauhan, Ld. Csl.
For respondent : Ms. Sharmila Patial, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:

“Whether the termination of services of Shri Narinder Kumar s/o Shri Mohan Lal workman by the Senior Executive Engineer, Electrical Division, HPSEB, Rampur Bushahr, District Shimla, HP w.e.f. 25.5.1999 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that the petitioner was initially employed by the respondent Board on 25.7.1992 on daily wages basis and continued as such till 24.1.1998 and as such the petitioner had completed 240 days in calendar year and in twelve calendar months preceding his termination and the services of the petitioner were illegally

terminated on 24.1.1998 and then the petitioner filed an OA before the Administrative Tribunal and the petitioner was reengaged by the order of Administrative Tribunal on 18.11.1998 and again the services of the petitioner were terminated illegally on 21.4.1999 and then the petitioner filed an OA before the Administrative Tribunal which was disposed of for want of jurisdiction and that the petitioner was discharging his duties with the best of his abilities and to the entire satisfaction of his superiors and that the services of the petitioner were terminated on 25.5.1999 without assigning any reason to the utmost dismay of the petitioner which is arbitrary, malafide and issued in colorable exercise of powers and in utter disregard and violation of rules, regulations, standing orders, due process of law and was violative of articles 14,16 and 311 of Constitution of India and against the natural justice and even some new persons are working on the same posts and S/Shri Chattar Singh and Mohan Singh juniors to the petitioner are retained in service by the department and as such the termination is against the mandatory provisions of sections 25F, 25G and 25H of the Industrial Disputes Act, 1947 and as such prayed for reinstatement from the date of illegal, termination with full back wages and other consequential benefits, hence this claim duly supported by an affidavit.

3. The respondent resisted and contested the claim of the petitioner, which filed reply inter alia raising preliminary objections that the claim petition is bad for non joinder of necessary party, having no enforceable cause of action against the respondent, estoppel and barred by time. On merits, it is contended that the petitioner was initially engaged as daily wages beldar on muster roll on 25.8.1993 and worked on different spell up to 24.5.1999 against specific work with breaks. The petitioner was engaged against specific work as and when the work was available with the respondent and after the completion of work, the services of the petitioner automatically came to an end. It is denied that the petitioner had completed 240 days in any calendar year and that the petitioner was served one months notice on 21.4.1999 as required under law which is not arbitrary and malafide and the respondent has not violated the rules and no junior person was retained by the respondent in place of the petitioner and that the petitioner was not engaged on permanent nature of work, hence the respondent was not bound to retain the petitioner in the department without work and as such prayed for the dismissal of claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 10.8.2007 on the pleadings of the parties:

1. Whether the service of the petitioner have been illegally terminated by the respondent without complying the provisions of I.D Act, 1947? If so, its effect?
OPP.
2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to?
OPP.
3. Whether the petition is bad for non joinder of necessary parties?
OPR.
4. Whether the petition is barred by limitation?
OPR.
5. Relief.
6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1.	Yes.
Issue no. 2.	Entitled for reinstatement in service with seniority and continuity but without back wages.
Issue no.3.	No.
Issue no.4	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No.1

8. Coming to this issue, the petitioner has examined himself as PW1, who tendered his affidavit Ex. PA in his evidence. In cross examination, the petitioner has denied that he abandoned the job of his own. It is also denied that he had not completed 240 working days in a calendar year preceding his termination. The respondent has engaged his juniors S/Shri Mohan Lal and Chattar Singh.

9. To rebut the case of the petitioner, the respondent has examined RW-1 Shri Molak Ram, Senior Assistant, HPSEB, Division Rampur, who has stated that the petitioner was engaged as beldar on daily wages on 25.8.1993, who continued as such till 24.5.1999 and the petitioner has not completed 240 working days in any calendar year preceding his termination. The petitioner abandoned the job of his own and no junior was engaged by the respondent.

10. The case of the petitioner is that he being the daily wages beldar having worked for more than 240 days in each calendar year preceding his termination and his termination without notice and compensation is illegal and even S/Shri Mohan Lal and Chattar Singh, juniors to him are still working with the respondent and as such he is also entitled for reinstatement in service with all consequential benefits.

11. On the contrary, the respondent contends that the petitioner was engaged for specific work and on the completion of the work the services of the petitioner were automatically disengaged and no junior to the petitioner is working with the department, hence the petitioner is not entitled to any relief claimed by him.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, the petitioner has failed to prove on record that he had put in more than 240 working days in twelve calendar months preceding his termination as there is nothing on record which could show that the petitioner had completed 240 working days in twelve calendar months with the respondent preceding his termination, hence the case of the petitioner does not fall under section 25F of the Industrial Disputes Act, 1947 but on the other hand, the respondent has taken the stand in its reply that notice for termination was issued to the petitioner as he was engaged for specific work but they have failed to prove any notice on record and moreover, when RW1 Shri Molak Raj, Senior Assistant appeared into the dock has clearly stated that the petitioner has abandoned the job of his own and even the witness has admitted in his cross examination that no notice nor compensation was paid to the petitioner at the time of his termination and as such even the plea of RW1 is taken into consideration that the

petitioner himself is responsible for loosing his job even then there is nothing on record which could show that the petitioner has abandoned the job of his own. Moreover, it was held by our own Hon'ble High Court incase titled as **State of HP & Others Vs. Bhatag Ram & Another as reported in latest HLJ 2007 (HP) 903** in which it was held that:

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

17. Now, adverting to the other aspect of the case, it is clear that the petitioner was engaged by the respondent as beldar, who worked with the respondent till 24.5.1999. It is worthwhile to mention here that Ld. Counsel for the respondent has given a fatal suggestion to the petitioner that respondent has engaged his juniors S/Shri Mohan Lal and Chattar Singh and as such it is clear that juniors to the petitioner are still continuing with the respondent and the respondent has violated the provisions of section 25G and H of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordships of **Hon'ble Supreme Court incase titled as State of Haryana Vs. Dilbag Singh reported in 2007 LLR 72 SC** in which it was held that :

“Where Labour found that person junior to respondent was still working and thus there was breach of section 25G & 25H of the Act. Court directed reinstatement with 50% back wages.”

Similarly, our own Hon'ble High Court of HP has held incase titled as **State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903.** in which it was held that:-

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

Thus, having regard to the above cited rulings and having regard to the entire evidence on record and inview of the fact that Shri Mohan Lal and Chattar Singh juniors to the petitioner are still working with the respondent and obviously therefore, I have no hesitation in coming to the conclusion that Shri Mohan Lal and Chattar Singh, juniors to petitioner are still working with the respondent which amounts to unfair labour practice and the case of the petitioner falls under section 25G and H of the Industrial Disputes Act, 1947 and as such the services of the petitioner were illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947 as the respondent has violated the principle of first come last go and also violated the provisions of sections 25G & H of the Industrial Disputes Act, 1947. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

Issue No.2

18. Since I have held under issue no.1 above that the services of the petitioner has been illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947, hence the petitioner is held entitled to his reinstatement in service alongwith seniority and continuity from the date of his illegal termination. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided against the respondent and in favour of the petitioner.

Issue No.3

19. In support of this issue, no evidence was led by the respondent nor it was pointed out during the course of arguments as to who are the necessary parties in this petition left to be impleaded in this case. In view of no such evidence on record, issue no.3 is decided in favour of petitioner and against the respondent holding that the petition is not bad for non joinder of necessary parties.

Issue No.4

20. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However, I have scrutinized the record of the case and observed that there is no limitation under the I.D Act as it was held by their lordships of **Hon'ble Supreme Court as reported in (1999) 6 SCC 82 case titled as Ajayab Singh Vs. Sirhind Co-operative Marketing -cum- processing Service Society Limited and Another in which it was held that:**

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Thus, on the strength of this ruling, it can safely be concluded that the claim of the petition is not barred by limitation. Accordingly, issue no.4 is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issue no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity from the date of his illegal termination. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 31st August, 2009 in the presence of parties counsels.

(Parveen)

J.S MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.

Ref no. 174 of 2006.
Instituted on 26.12.2006.
Decided on. 31.8.2009.

Kamla Nand S/o Shri Sarnu Ram, R/o Village Basara, P.O Kartot, Tehsil Rampur Bushahr, District Shimla, HP.

Petitioner.

Vs.

The Executive Engineer, Electrical Division, HPSEB, Rampur Bushahr, District Shimla, HP.

Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri P.P Chauhan, Ld. Csl.
For respondent : Ms. Sharmila Patial, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:-

“Whether the termination of services of Shri Kamla Nand S/o Shri Sarnu Ram workman by the Executive Engineer, Electrical Division, HPSEB, Rampur Bushahr, District Shimla, HP w.e.f. 25.5.1999 by paying retrenchment notice whereas junior to him are retained by the employer as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that the petitioner was initially employed by the respondent Board on 10.9.1994 on daily wages basis and continued as such till 24.5.1999 and as such the petitioner had completed 240 days in calendar year and in twelve calendar months preceding his termination and the services of the petitioner were illegally terminated on 19.2.1998 and then the petitioner filed an OA before the Administrative Tribunal and the petitioner was reengaged by the order of Administrative Tribunal on 15.7.1998 and again the services of the petitioner were terminated illegally on 21.4.1999 and then the petitioner filed an OA before the Administrative Tribunal which was disposed of for want of jurisdiction and that the petitioner was discharging his duties with the best of his abilities and to the entire satisfaction of his superiors and that the services of the petitioner were terminated on 25.5.1999 without assigning any reason to the utmost dismay of the petitioner which is arbitrary, malafide and issued in colorable exercise of powers and in utter disregard and violation of rules, regulations, standing orders, due process of law and was violative of articles 14,16 and 311 of Constitution of India and against the natural justice and even some new persons are working on the same posts and S/Shri Chattar Singh and Mohan Singh juniors to the petitioner are retained in service by the respondent and as such the termination is against the mandatory provisions of sections 25F, 25G and 25H of the Industrial Disputes Act, 1947 and as such prayed for reinstatement from the date of illegal, termination with full back wages alongwith interest @18% and other consequential benefits, hence this claim duly supported by an affidavit.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections that the claim petition is bad for non joinder of necessary party, having no enforceable cause of action against the respondent, estoppel and barred by time.

On merits, it is contended that the petitioner was initially engaged as daily wages beldar on muster roll on 19.10.1994 and worked on different spell up to 24.5.1999 against specific work with breaks. The petitioner was engaged against specific work as and when the work was available with the respondent and after the completion of work, the services of the petitioner automatically came to an end. It is denied that the petitioner had completed 240 days in any calendar year and that the petitioner was served with notice as required under law which is not arbitrary and malafide and the respondent has not violated the rules and no junior person was retained by the respondent in place of the petitioner and that the petitioner was not engaged on permanent nature of work, hence the respondent was not bound to retain the petitioner in the department without work and even the Board is exempted from all the provisions of the Industrial Act and HPSEB Standing Orders Act and as such prayed for the dismissal of claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 18.7.2007 on the pleadings of the parties:

1. Whether the retrenchment of the petitioner by the respondent is illegal? If so, its effect?

OPP.

2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to?

OPP.

3. Whether the petition is barred and the petitioner is having no locus standi to file the present petition?

OPR.

4. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1. Yes.

Issue no. 2. Entitled for reinstatement in service with seniority and continuity but without back wages.

Issue no.3. No.

Relief. Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No.1

8. Coming to this issue, the petitioner has examined himself as PW1, who tendered his affidavit Ex. PA in his evidence. In cross examination, the petitioner has admitted that he was engaged on 10.9.1994 as beldar and worked till 24.5.1999 and the respondent has given him notice

Ex. RA on 21.4.1999 for the retrenchment of his services. He was engaged on Jhakri section by the respondent for the erection of LT Line, installation of transformers and repair of the line. He worked for more than 240 days in 1996. It is denied that his services were terminated as per notice Ex. RA. It is also denied by the petitioner that the work for which he was engaged has already completed.

9. To rebut the case of the petitioner, the respondent has examined RW-1 Shri Molak Ram, Senior Assistant, HPSEB, Division Rampur, who has stated that the petitioner was engaged as beldar on daily wages on 19.10.1994, who continued as such till 25.5.1999 and then the petitioner was terminated from service, who has completed 240 working days in a calendar year 1996 but not in twelve calendar months preceding his termination and no junior was engaged by the respondent and there is no work available with the respondent.

10. The case of the petitioner is that he being the daily wages beldar having worked for more than 240 days in each calendar year preceding his termination and his termination is illegal and even juniors to him are still working with the respondent and as such he is also entitled for reinstatement in service with all consequential benefits.

11. On the contrary, the respondent contends that the petitioner was engaged for specific work and on the completion of the work the services of the petitioner were disengaged after serving notice and no junior to the petitioner is working with the department, hence the petitioner is not entitled to any relief claimed by them.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged by the respondent as daily wages beldar w.e.f. 19.10.1994 to 24.5.1999 as is evident from the mandays chart Ex. RA placed on record. It is also clear that the petitioner has completed 281 working days in twelve calendar months preceding his termination as it was admitted by RW1 Shri Molak Ram in his cross examination and as such it is clear that the petitioner has completed more than 240 working days i.e 281 working days in twelve calendar months preceding his termination and further more the case of the petitioner is duly supported by mandays chart Ex. RB which goes to show that the petitioner had completed 281 days from 4.6.1998 to 24.5.1999 i.e twelve calendar months preceding his termination and therefore, the petitioner has proved on record that he had completed 281 working days in twelve calendar months preceding his termination, hence the case of the petitioner squarely falls under section 25F of the Industrial Disputes Act, 1947. Now turning to the legal aspect of the case, the respondent has tried to establish on record that notice Ex. RB was served upon the petitioner. After the close scrutiny of the notice Ex. RB it remains a fact that the notice Ex. RB was issued by the Executive Engineer, HPSEB Rampur under Standing Orders Act, 1946 and not under section 25F of the Industrial Disputes Act, 1947 which is not legally given. However, Section 25-F of the 'Act' says that:

25-F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

- (b) **the workman has been paid, at the time of retrenchment compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and**
- (c) **notice in the prescribed manner is served on the appropriate government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)**

14. In the instant case, the respondent has failed to comply with the provisions of section 25F properly which has not served the legal notice on the appropriate government by notification in the official gazette as envisaged under section 25F © of the Industrial Disputes Act, 1947 nor the compensation in lieu of notice was paid to the petitioner at the time of his retrenchment and as such I have no hesitation in coming to the conclusion that the retrenchment of the petitioner by respondent is illegal without following the provisions of section 25F of the Industrial Disputes Act, 1947. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

Issue No.2

15. Since I have held under issue no.1 above that the services of the petitioner has been illegally terminated by the respondent without complying with the provisions of section 25F of the Industrial Disputes Act, 1947, hence the petitioner is held entitled to his reinstatement in service alongwith seniority and continuity from the date of his illegal termination. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided against the respondent and in favour of the petitioner.

Issue No.3

16. In support of this issue no evidence was led by the respondent nor it was pressed during the course of arguments. However, I have scrutinized the record of the case and observed that there is no limitation under the I.D Act as it was held by their lordships of **Hon'ble Supreme Court as reported in (1999) 6 SCC 82 case titled as Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another** in which it was held that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Thus, on the strength of this ruling, it can safely be concluded that the claim of the petition is not barred by time and further the petitioner having been terminated from service is aggrieved workman and as such has got locus standi to file this claim petition. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity from the date of his illegal termination. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate

that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 31st August, 2009 in the presence of parties counsels.

(Parveen)

J.S MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.

Ref no. 99 of 2005.
Instituted on 12.12.2005.
Decided on. 31.8.2009.

Sohan Lal S/o Shri Sunder Ram R/o VPO Barotiwala, Tehsil Kasauli, District Solan, HP.

Petitioner.

Vs.

The Manager, HP Financial Corporation, District Office, Sector-1, Parwanoo, District Solan, HP.

Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR.

For respondent: Shri B.S Kapoor, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:

“Whether the termination of services of Shri Sohan Lal S/o Shri Sunder Ram workman by the Manager HP Financial Corporation, District Office, Sector-1, Parwanoo, District Solan, HP w.e.f. 10.5.2003 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. The petitioner has filed a claim asserting therein that the petitioner was engaged in the employment of respondent corporation under its office at Parwanoo as Chowkidar on 27.12.2001,

who was deployed in the Lalji Paper Mill Pvt. Ltd. Barotiwala which was taken over from its management by the corporation and as such the petitioner was deployed to watch and ward the assets and property of this industrial unit at Barotiwala and remained continued as such till 10.5.2003 when his services were illegally terminated without any cogent reason or justification by illegal retrenchment and that the services of the petitioner were terminated orally by adopting the method of unfair labour practice and without complying with the mandatory provisions of Industrial Disputes Act, 1947, who was never afforded any opportunity to defend himself and that the respondent has retrenched the petitioner without following the statutory and mandatory provisions of section 25F of the Act and that the termination has been based on surmises and conjecture being violative of section 25G and H of the Act, 1947 as after his termination, the juniors were retained and new hands were recruited and deployed in his place of working and as such the termination of the petitioner is wrong and illegal and that the case of the petitioner is duly covered and fall under the ambit of section 2(oo) of the Act and that the petitioner is unemployed from the date of his illegal removal from service as his integrity has been made doubtful in the eyes of one and all and shall remain so in future and as such prayed for reinstatement since the date of his illegal termination with full back wages, seniority and other consequential benefits alongwith costs, hence this claim.

3. The respondent resisted and contested the claim of the petitioner which filed reply interalia raising preliminary objection of having no jurisdiction and that the services of the petitioner were engaged on contract basis to perform the duties of watch and ward of the taken over assets of the unit for limited purpose whose employment was co-terminus with the transfer of industrial unit in which the petitioner was engaged and had been taken over by the respondent under section 29 of the State Financial Corporation Act, 1951. It is contended that the company M/s Lalji Papers Pvt. Ltd was wound up by the orders of Hon'ble Delhi High Court dated 23.8.1991 under the provisions of company law and lateron on 27.3.2003, the assets of M/s Lalji Papers Pvt. Ltd. was sold by the Hon'ble Court and confirmed the sale and possession of assets was given to the purchaser on the direction of the Hon'ble Court and there was no industrial activities in the closed factories/units at the time of taking over of its assets by the respondent corporation and as such the petitioner cannot be deemed as an employee of the industrial concern under the Act and that the petitioner is not the employee of the respondent corporation. On merits, it is contended that the respondent corporation has been established under the provisions of the State Financial Corporation Act, 1951 for providing the financial assistance to the intending entrepreneurs for establishing the industrial units in Himachal Pradesh and the mortgaged/hypothecated, immoveable and moveable assets of the unit are mortgaged in favour of the respondent corporation incase of committing persistent default by them and the respondent corporation initiate taken over action under section 29 of the State Financial Corporation Act, 1951 for recovery of its outstanding loan against defaulted units and sell the same to the intending purchaser after getting the sale notice advertised in the leading news papers and as such in order to watch and ward the taken over assets of the units, the respondent engages the services of daily waged Chowkidars purely on contract basis for a limited period and their engagement is co-terminus with the transfer of such industrial units and that the petitioner approached the respondent for engaging him as daily wages chowkidar for watch and ward of the assets of the said unit on 27.12.2001, who was verbally engaged on 27.12.2001 on contract basis and the services of the petitioner were discontinued w.e.f. 10.5.2003 when the possession of assets of the taken over unit were handed over to its purchaser and as such the respondent corporation is neither an industry nor a person like petitioner is workman and the wages for the watch and ward of the taken over assets are debited in the loan account of the taken over unit of the loanee concerned in the account ledger of the respondent and the petitioner cannot be considered employee of the respondent corporation and that the service of the petitioner was rightly and validly discontinued and no provisions of section 25G and H of the Act has been violated and that there was no vacant post lying in other taken over units to watch and ward the assets and as such prayed for the dismissal of the claim petition.

4. Rejoinder not filed. The following issues were framed by this Court on 3.11.2006 on the pleadings of the parties:

1. Whether the services of the petitioner have been illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947? If so, its effect?

OPP.

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to?

OPP.

3. Whether this Tribunal having no jurisdiction to entertain the present application?

OPR.

4. Relief.

5. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1. Yes.

Issue no. 2. Entitled to reinstatement with seniority and continuity but without back wages.

Issue no.3. No.

Relief. Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No.1

7. Coming to this issue, the petitioner has examined himself as PW1, who has stated that he was engaged on 27.12.2001 in Lalji Paper Mill at Barotiwala by Managing Director of Financial Corporation and he remained on duty till 10.5.2003 and he was removed from service. He worked for 365 days in each year and certificate mark X was given to him. No notice nor compensation has been given to him when he was removed from service. He was engaged on daily wages and he is doing agriculture work in his village and as such prayed that he may be reinstated with all benefits.

8. To rebut the case of the petitioner, the respondent has examined RW1 Shri G.C Chopra, D.G.M Jharmajri, Baddi, who has stated that Lalji Paper Mills Barotiwala was taken over by the HP State Financial Corporation under section 29 of HP State Financial Corporation Act, 1951 and Sohan Lal was engaged as chowkidar from 27.12.2001 to 9.5.2003 on temporary basis and then the factory was taken over by official Liquidator as ordered by Hon'ble High Court of Delhi which was subsequently sold by official Liquidator. The salary of the chowkidar was never paid by the HPFC but it was debited from the account of the Lalji Paper Mills Company and as such the petitioner never remained the employee of HPFC.

9. The case of the petitioner is that he was engaged as chowkidar on daily wages by the respondent to watch and ward the taken over unit, who had completed more than 240 days in each calendar year preceding his termination whose termination is bad under the law without notice and compensation and as such he is entitled for reinstatement in service with all consequential benefits.

10. On the contrary, the respondent contends that the petitioner was legally terminated from service as the engagement of the petitioner was purely on co-terminus basis and even the petitioner never remained the employee of the respondent corporation at any point of time, hence the petitioner is not entitled to any relief as claimed by him.

11. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged as chowkidar to watch and ward the taken over unit M/s Lalji Paper Mills Pvt. Ltd. by the respondent which was taken over by the respondent corporation under section 29 of the State Financial Corporation Act, 1951 and as such the petitioner continued till 9.5.2003 when the unit was sold. It is also proved on record that the petitioner has completed more than 240 working days in twelve calendar months preceding his disengagement which is not disputed by the respondent. No doubt that the respondent has tried to establish on record that the engagement of the petitioner was purely on temporary basis but there is nothing on record which could show the terms of the employment. In the absence of evidence as to the terms of the employment of the petitioner and in view of the admitted fact that the petitioner has been in continuous service for a period of more than 240 working days in twelve calendar months preceding his termination and even the respondent has miserably failed to discharge the onus that the employment of a workman falls within the excepted or excluded categories mentioned in section 2(oo) of the Industrial Disputes Act, 1947 is heavily on the employer. Moreover, there is nothing on record which could go to show that the services of the petitioner have been legally terminated by the respondent. The **Hon'ble Supreme Court in Hari Mohan Rastogi Vs. Labour Court and another (1984) Suppl. SCC 428** has held that:

“Termination of service not covered within the excepted or excluded categories mentioned in section 2(oo) amounts to retrenchment and non compliance with section 25F of Industrial disputes Act, 1947 would vitiate such termination.”

Similarly, our own **Hon'ble High Court in CWP no. 739 of 1998 dated 1.12.2003 titled as Branch Manger HPFC and another Vs. Vidhi Singh and another and CWP no. 741 of 1998 dated 1.12.2003 in case titled as Branch Manager HPFC and another Vs. Hem Raj and another** has held that :

“The termination of services of the two respondents by the petitioner without complying with the requirements of section 25F is bad in law.”

In the instant case, the respondent has failed to give notice under section 25F of the Industrial Disputes Act, 1947 to the petitioner at the time of his retrenchment. It is also borne out from the record that the respondent has tried to establish on record that the petitioner was not the employee of the respondent corporation but it remains a fact that the petitioner was engaged as daily wages chowkidar by the respondent corporation to look after the taken over unit of Lalji Paper Mills Pvt. Ltd. Barotiwala and the wages were paid to the petitioner by the respondent and as such I find no force in this contention, hence hereby rejected.

13. Thus, having regard to the entire evidence on record and having regard to the fact that the services of the petitioner have been illegally terminated by the respondent without following the provisions of section 25F of the Industrial Disputes Act, 1947 on the completion of 240 working

days in twelve calendar months preceding his termination as the respondent has failed to prove on record that the proper and legal notice was given to the petitioner at the time of his retrenchment. Moreover, Section 25-F of the 'Act' says that:

25-F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)

14. Thus, it is proved on record that the respondent has failed to comply with the provisions of section 25F properly which has not served the legal notice on the appropriate government by notification in the official gazette as envisaged under section 25F © of the Industrial Disputes Act, 1947.

15. Thus, having regard to the entire evidence on record, I have no hesitation in coming to the conclusion that the services of the petitioner have been illegally terminated by the respondent without following the mandatory provisions of Industrial Disputes Act, 1947. Accordingly, issue no.1 is decided in favour of the petitioner and against the respondent.

Issue No.2

16. Since I have held under issue no.1 above that the services of the petitioner have been illegally terminated by the respondent without following the mandatory provisions of Industrial Disputes Act, 1947, hence the petitioner is held entitled to reinstatement as chowkidar with seniority and continuity in service. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of petitioner and against the respondent.

Issue No.3

17. In support of this issue, no evidence was led by the respondent being the legal issue. However, I have scrutinized the record of the case and observed that this is a clear case of illegal termination without complying with the mandatory provisions of section 25F of the Industrial Disputes Act, 1947 and obviously therefore, this court has got jurisdiction to try and entertain the case of the daily wager chowkidar. Accordingly this issue is decided in favour of petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service from the date of his illegal retrenchment forthwith with seniority and continuity. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 31st August, 2009 in the presence of parties counsels.

(Parveen)

J.S MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.

Ref no. 151 of 2006.
Instituted on 18.11.2006.
Decided on. 31.8.2009.

Kundan Singh S/o Shri Jaiya Ram R/o Village Chanjah, P.O Kulag, Sub Tehsil Kupvi, District Shimla, HP.

Petitioner.

Vs.

1. The Managing Director, Himachal Road Transport Corporation, Main Bus Stand, Shimla-3.
2. The Deputy Divisional Manager, (Hqurs) Himachal Road Transport Corporation Head Office Shimla-3.

Respondents.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.R Sharma, Ld. Csl.

For respondent: Shri J.S Bagga, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:

“Whether the termination of services of Shri Kundan Singh S/o Shri Jaiya Ram workman by the (1) Managing Director, Himachal Road Transport Corporation, Main Bus Stand,

Shimla-3. (2) The Deputy Divisional Manager, (Hqurs) Himachal Road Transport Corporation Head Office Shimla-3 w.e.f. 24.4.2001 without complying the provisions of Industrial Disputes Act, 1947 as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?"

2. The petitioner has filed a claim asserting therein that the petitioner was initially appointed as Coal Boy w.e.f. October, 1995 on 89 days basis where he continued as such till 12.1.2000 and then he was appointed as peon w.e.f. 16.10.1999 and continued as such till 23.4.2001 without any artificial and fictional break, who had completed 240 days in every calendar year and then his services were terminated illegally and arbitrary without assigning any cogent reason and that the petitioner has unblemished record of his service and never gave any opportunity of complaint and that the petitioner requested the respondent for reengagement but to no avail and that no notice as required under section 25F of the Industrial Disputes Act, 1947 was issued to the petitioner and even junior to the petitioner had been retained in service by the respondent and that the action of the respondent in orally terminating the services of the petitioner and retaining junior persons clearly violated the principle of last come first go and that the employers have violated the provisions of sections 25B, 25F, 25G and H of the Industrial Disputes Act, 1947 and that there is plenty of work available with the employers and that the requirement to pay retrenchment compensation alongwith prior notice is sine qua non for valid order for termination and that the right to life under article 21 of the Constitution of India is being snatched by the employer by an illegal means and that the termination of the petitioner by the employers have not been done in a good faith but in a colorable exercise of the powers by employers right and by way of victimization and that the respondent never charge sheeted the petitioner before his termination and that the respondents have also failed to tender retrenchment compensation on account of service rendered by the petitioner to which he was entitled and that the respondents are required to maintain the seniority of the workmen and offer employment but in the case of the petitioner, the respondents have failed to discharge their duties and as such prayed for reinstatement in service with all consequential benefits alongwith seniority, back wages, regularization, promotion, hence this claim duly supported by an affidavit.

3. The respondent resisted and contested the claim of the petitioner which filed reply interalia raising preliminary objections of maintainability, having barred by delay and laches and that the petitioner was initially engaged as Coal Boy for a specific period of 30 days during the Winter season in the year 1995-96 and it was clearly mentioned in the office order that the services of the petitioner is for specific period and the same shall be terminated without any notice or otherwise, hence the petition is not maintainable under Industrial Disputes Act nor the petitioner is entitled for any compensation and that there is no question of 240 days and that there is no violation of any Industrial Disputes Act, or article 21 of the Constitution of India. On merits, it is contended that the petitioner was initially engaged as Coal Boy for 30 days and then as per requirement, who was further engaged on part time basis as Chowkidar and Peon for six hours in a day, hence there is no question of 240 days. It is denied that the petitioner continued till 23.4.2001 without any break and has completed more than 240 days in every calendar year. It is also denied that the service of the petitioner was terminated arbitrarily and without any cogent reason and that the petitioner had never completed 240 days preceding his termination and that when the work and conduct of the petitioner was not found satisfactory during part time service, hence the petitioner has not been allowed to continue in service and that no notice under section 25F of the Industrial Disputes Act is required to be issued to the petitioner, who was a part time worker and that the petitioner was never engaged on regular/daily wages, who was engaged on part time basis, hence there is no question of his engagement and even no junior to the petitioner was engaged and as such prayed for the dismissal of the claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 8.10.2007 on the pleadings of the parties:

1. Whether the services of the petitioner have been illegally terminated w.e.f. 24.4.2001 without complying the provisions of Industrial Disputes Act, 1947? If so, its effect?
OPP.

2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to?
OPP.

3. Whether the present petition is not maintainable?
OPR.

4. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1.	No
Issue no. 2.	Not entitled to any relief.
Issue no.3.	No.
Relief.	Reference answered in negative per operative part of award.

REASONS FOR FINDINGS

Issue No.1

8. Coming to this issue, the petitioner has examined himself as PW1, who has stated that he worked as a Coal Boy in HRTC Head Office Shimla-3 from November, 1995 to 15.10.1999 and on 16.10.1999 he was appointed as peon by HRTC and he continued as such till 23.4.2001 and then he was removed from service without any notice and compensation, who had worked as Coal Boy and Peon for more than 240 days in a calendar year. His juniors were retained by the HRTC without considering him and since then he is sitting idle.

9. To rebut the case of the petitioner, the respondent has examined RW1 Shri Jagmohan Chauhan, Senior Assistant, HRTC Rural Unit-3, Shimla, who has stated that the petitioner was engaged as a Coal Boy from 11.11.1997 to 13.3.1999 by the respondent for specific period during winters and was initially engaged for 30 days, who was engaged as per need of the work and subsequently, the petitioner was engaged as part time peon on 16.11.1999 and continued upto 14.4.2001 with breaks and proved the engagement orders Ex. RA to Ex. RD. The claim of the petitioner is wrong, who had not completed 240 working days in any calendar year preceding his termination and the petition is belated and hopelessly time barred.

10. The case of the petitioner is that he being the daily wages Coal Boy and then he worked as Peon, who had completed 240 working days in each calendar year and even in twelve calendar months preceding his termination and his juniors are still working with the respondent,

who was illegally terminated by the respondent without notice and without payment of compensation, hence he is entitled to be reinstated in service with all consequential benefits.

11. On the contrary, the respondents contend that the petitioner was legally terminated from service as the engagement of the petitioner was purely on specific work on part time basis and no junior to the petitioner is working with the respondent on part time basis, hence the petitioner is not entitled to any relief as claimed by him.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that initially the petitioner was engaged as Coal Boy by the respondent on 11.11.1997, who continued as such till 13.3.1999 and then he worked as peon with the respondent w.e.f. 16.11.1999 to 14.4.2001 with breaks as is evident from the orders of engagement of the petitioner Ex. RA to Ex. RD placed on record. No doubt that the petitioner tried to establish on record that he has completed 240 working days in twelve calendar months preceding his termination but there is nothing on record which could show that the petitioner has completed 240 working days in twelve calendar months preceding his termination. The petitioner in his cross examination has admitted as under:

“It is correct that I have not produced any document on record which could show that I had worked for more than 240 days in a calendar year.”

Thus, it is clear that the petitioner has failed to prove on record that he has completed 240 working days in twelve calendar months preceding his termination. It is significant to note that the petitioner examined himself as PW-1 but he has not proved his mandays chart in order to show that he had completed 240 working days in twelve calendar months preceding his termination. It is well settled in **2009 (120) FLR 1007 an Civil Appeal no. 4468 of 2005 of Hon’ble Supreme Court incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others** in which it was held that:

“The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer.”

14. It was further held by their lordships of Hon’ble Supreme Court in **AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh** in which it was held that:-

“Incuse workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”

15. Now, turning to the other aspect of the case, the petitioner has stated on oath that juniors to him are still working with the respondent but he has failed to prove on record that who are his juniors are working with the respondent as no record from the office of the respondent was summoned by the petitioner nor any evidence was led in order to show that his juniors are still

continuing with the respondent as such I find no force in this contention, which is hereby rejected especially when the petitioner has admitted in his cross examination that he had not produced any document on record which could show that he had worked for more than 240 days in the calendar year. The petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination nor his juniors are proved to be continuing in service of respondent, hence the case of the petitioner does not fall under section 25F, 25G and 25H of the Industrial Disputes Act, 1947.

16. Now, turning to the legal aspect of the case, the petitioner has tried to establish on record that he was engaged as daily wages Coal Boy/Peon by the respondents but there is nothing on record which could show that the petitioner was engaged as daily wages Coal Boy/Peon. On the other hand, respondent has proved on record that the engagement of the petitioner was purely on specific period subject to the availability of work as is evident from the office orders Ex. RA to Ex. RD issued by the respondent from time to time to the petitioner placed on record which clearly go to show that the petitioner was engaged as per the need of work from time to time, who was not engaged on regular basis/daily wages basis at any point of time by the respondent, hence the services of the petitioner stood automatically dispensed with on the completion of work. Moreover, it is well settled in (2006) 6 SCC 221, case titled as Reserve Bank of India V. Gopinath Sharma & Anr. In which it was held that:-

“Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held, had no right to the post.”

17. Similarly in 2006 (2) SCC 794 in case titled as Haryana State Agricultural Marketing Board V. Subhash Chand & Anr. in which it was held that:-

“If nature of service does not come within purview of definition of retrenchment in section 2(oo), question of applicability of section 25-G does not arise. Bare perusal of offer of appointment (set out in para 2 herein) clearly shows that respondent was appointed on seasonal contracts. Hence, respondent not having been reengaged on expiry thereof, he was not retrenched within meaning of section 2(oo), and his case fell exception in section 2(oo)(bb). Hence, section 25-G was inapplicable in his case and dispensing with engagement of respondent cannot be said to be unwarranted in law.”

18. Apart from it, it was further held incase titled as Punjab State Electricity Board V. Darbara Singh reported in 2006 LLR 68 SC. and incase titled as Municipal Council Samrala V. Sukhwinder Kaur reported in 2006 LLR 1009 SC in which it was held that:

“Material on record established that engagement of workman was for specific period and as such his termination will be excluded as per the provisions of section 2(oo)(bb) of the I.D Act and hence, no retrenchment compensation will be payable on his termination even when he has worked for more than 240 days in the preceding 12 calendar months.”

19. Thus, on the strength of the above cited rulings and having regard to the entire evidence on record, it can safely be concluded that the services of the petitioner have not been illegally terminated w.e.f. 24.4.2001 without complying with the provisions of Industrial Disputes Act, 1947 and rather the petitioner was engaged for specific period and for seasonal work whose services automatically came to an end after the expiry of specific and seasonal work. Accordingly, this issue is decided in favour of the respondent and against the petitioner.

Issue No.2

20. Since I have held under issue no.1 that the services of the petitioner have not been illegally terminated by the respondent without following the provisions of Industrial Disputes Act, 1947, hence the petitioner is not entitled to any relief as prayed by him. Accordingly, issue no.2 is decided in favour of the respondents and against the petitioner.

Issue No.3

21. In support of this issue, no evidence was led by the respondent being the legal issue nor it was pressed during the course of arguments. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of petitioner and against the respondents.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the Official Gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 31st August, 2009 in the presence of parties counsels.

(Parveen)

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.

Ref no. 122 of 2004.
Instituted on 27.07.2004.
Decided on. 31.8.2009.

Mehar Chand S/o late Shri Ranvir Singh, R/o Village and P.O Dharakali, Tehsil Rampur, District Shimla, HP.

Petitioner.

Vs.

1. The President, Zila Sainik Board, Solan, HP.
2. The Deputy Director, Zila Sainik Board, Solan District Solan, HP.

Respondents.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Arvind Sharma, Ld. Csl.
For respondent : Shri Alok Bhardwaj, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:

“Whether the termination of services of Shri Mehar Chand S/o late Shri Ranvir Singh, Ex daily wages chowkidar by the President Zila Sainik Board, Solan HP 2. The Deputy Director, Zila Sainik Board, Solan District Solan, HP w.e.f. 24.7.1999 without conducting domestic enquiry and without complying with section 25F of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits Shri Mehar Chand is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that the petitioner was appointed as chowkidar by the respondents at Sainik Rest House, Solan on 1.3.1993 on daily rated basis and the petitioner continued as such upto 1998 when he was transferred and ordered to be posted at Sainik Rest House, Parwanoo where the petitioner continued as such till 17.7.1999 and then his services were illegally retrenched by the respondents and that throughout the period between 1.3.1993 to 17.7.1999, the petitioner had been discharging his duties as chowkidar to the entire satisfaction of his superiors, who remained in continuous service of the respondents and completed 240 days in each calendar year preceding 17.7.1999 and during this period, the petitioner worked with zeal and devotion, who was never subjected to any charge sheet, censure, warning letter or show cause notice and as such the petitioner condemned unheard which is against the principle of natural justice and that the order of retrenchment is illegal, null and void as the respondents did not comply with the mandatory provisions of section 25N of the Industrial Disputes Act, 1947 and that the petitioner approached the respondents time and again after 17.7.1999 for work but the petitioner was not reengaged and even junior to the petitioner are still working and that the petitioner has a large family to support and none of the other family member being employed, the petitioner has been forced into virtual starvation by the illegal act of the respondents and the respondents has sufficient work and funds available for the persons employed by the respondents on daily wages and as such prayed that the petitioner may be deemed to be on the rolls of the respondents after 17.7.1999 alongwith all consequential benefits of pay and seniority and regularization, hence this claim.

3. The respondents resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability as the petitioner is not an ex-serviceman and that the petitioner is estopped to file the present petition due to his own act, deed and conduct. On merits, it is contended that the petitioner was never appointed as chowkidar and rather the petitioner was temporarily kept without holding any interview or following any procedure nor the petitioner was issued any appointment letter and even the petitioner is not an ex serviceman as required under the rules for the post of chowkidar-cum-mali and as such the appointment of the petitioner as chowkidar does not arise at all. The petitioner did not perform his duties honestly and many times he was found absent from his work place without informing the authorities concerned, who was found indulging in misappropriation and embezzlement of Sainik Rest House funds, hence his services were terminated vide order dated 17.7.1999 and that the work and conduct of the petitioner remained unsatisfactory throughout, who was found in misappropriation of Sainik Rest House Fund and then the services of the petitioner were terminated and no person was appointed against the post of the chowkidar till now and that the termination orders were issued on 17.7.1999 after giving show cause notice and due opportunities have been afforded to the petitioner and even the post of the petitioner is not on daily wages but was on fixed wages and to meet out the

requirements/maintenance of Sainik Rest House, Parwanoo, an agreement was executed by the Director Sainik Welfare HP to rent out the Sainik Rest House Parwanoo to a private party before the termination of the petitioner, hence the services of the petitioner were not required which were terminated w.e.f. 17.7.1999 and that the wages of chowkidars and other expenditure is being met out of the income of rest house so earned from ex servicemen, who stay in the rest house and as such prayed for the dismissal of the claim petition.

4. No rejoinder filed. The following issues were framed by this Court on 6.12.2005 on the pleadings of the parties:

1. Whether the service of the petitioner were wrongly terminated by the respondent *w.e.f.* 24.7.1999 without complying the provisions of I.D act, 1947? If so, its effect?

OPP.

2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to?

OPP.

3. Whether the petition in the present form is not maintainable?

OPR.

4. Whether the respondents are not having the work for which the petitioner was engaged? If so, its effect?

OPR.

5. Relief.

5. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1.	Yes.
Issue no. 2.	Entitled for reinstatement in service with seniority and continuity but without back wages.
Issue no.3.	No.
Issue no.4	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No.1

7. Coming to this issue, the petitioner has examined himself as PW1, who tendered his affidavit Ex. PA in his evidence. In cross examination, the petitioner has admitted that he was engaged as Chowkidar by Captain Ratti Ram Verma and the appointment letter was misplaced by him which was issued by Shri Verma. The petitioner has admitted that he was engaged in ex serviceman quota and he is not ex serviceman.

8. To rebut the case of the petitioner, the respondent has examined RW-1 Ex Naib Subedar Ravinder Sharma, who also tendered his affidavit Ex. RA alongwith authorization letter Ex. RB in his evidence.

9. The case of the petitioner is that he being the daily wages chowkidar having worked for more than 240 days in each calendar year preceding his termination and his termination without notice and compensation is illegal and even no domestic enquiry was conducted against him at any point of time and as such he is also entitled for reinstatement in service with all consequential benefits.

10. On the contrary, the respondents contend that the petitioner was never appointed as chowkidar. According to the rules, the petitioner is not an ex-serviceman nor he was appointed by the competent authority and even the work of the petitioner was not found satisfactory, who was found involved in misappropriation and embezzlement of Sainik Rest House funds, who was rightly terminated from service, hence the petitioner is not entitled to any relief claimed by him.

11. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged by the respondents as chowkidar, who was posted at Sainik Rest Hose, Solan as well as Sainik Rest Hose, Parwanoo, who had worked with the respondents for more than five years. It is also proved on record that the petitioner had completed 240 working days in each and every calendar year preceding his termination which fact is not in dispute whose services have been terminated on 17.7.1999 by the respondents without following any procedure of law. No doubt that the respondents have tried to establish on record that the work and conduct of the petitioner was not found satisfactory as the petitioner involved in misappropriation and embezzlement of Rest House funds and as per the respondents, the petitioner absconded from duties for which his explanation was called by the respondent vide Exs. RA, Ex. RB and Ex. R3 but it remains a fact that no domestic enquiry was conducted by the respondents against the petitioner for his alleged absence and alleged embezzlement. There is nothing on record which could show that the petitioner has ever indulged in misconduct as the respondents have failed to produce relevant record before this Court in order to show that the petitioner ever indulged in misappropriation of Sainik Rest House funds and willful absence from duties. Since no domestic inquiry for alleged absconding and alleged misappropriation of Rest House funds was conducted by the respondent before the termination of the petitioner nor the petitioner was ever found guilty of such misconduct hence the termination of petitioner is held to be illegal and unjustified. Here I am fortified with a view taken by their lordships of Hon'ble Supreme Court in AIR 1999 Supreme Court Cases -1540, case titled as M.C D V/s Parveen Kumar Jain & Ors. & also in 2001 (4) SLR 690 in case titled as Narotam Parasad Gautam V. State of U.P & Ors. in which it was held that :-

“termination of services on the basis of alleged misconduct; relevant record not made available to the Court, adverse inference drawn on the non production of relevant record. No procedure followed before passing of order of termination. Order vitiates and set-aside.”

Now, turning to the other aspect of the case, it is also the case of the respondents that the petitioner was not from an ex serviceman quota, who was engaged only on temporary basis and even the Rest House is handed over to a private party but it remains a fact that the petitioner had applied for the job by giving an application in which the petitioner has categorically explained that his father was an ex serviceman, hence it does not lie in the mouth of the respondents to say at this belated stage that the petitioner was not from an ex serviceman quota, who had already served as chowkidar in Sainik Rest House Solan and Sainik Rest House Parwanoo and therefore this contention is rejected being devoid of force. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

Issue No.2

13. Since I have held under issue no.1 above that the services of the petitioner has been illegally terminated by the respondent without conducting any domestic inquiry against him and without complying with the provisions of Industrial Disputes Act, 1947, hence the petitioner is held entitled to his reinstatement in service alongwith seniority and continuity from the date of his illegal termination. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided against the respondent and in favour of the petitioner.

Issue No.3

14. In support of this issue, no evidence was led by the respondent nor it was pointed out during the course of arguments as to who are the other necessary parties left to be impleaded in this case. In view of no such evidence on record, issue no.3 is decided in favour of petitioner and against the respondent holding that the petition is not bad for non joinder of necessary parties.

Issue No.4

15. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. I have scrutinized the statement of RW 1 Ex. Naib Subedar Ravinder Sharma, who has admitted that he is not authorized to depose in this case. In view of no such evidence on record on this issue to the effect that the respondents are not having the work for which the petitioner was engaged, this issue is decided in negative.

RELIEF

As a sequel to my above discussion and findings on issue no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service with seniority and continuity from the date of his illegal termination. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 31st August, 2009 in the presence of parties counsels.

(Parveen)

J.S MAHANTAN,
*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

सिंचाई एवं जन स्वास्थ्य विभाग**अधिसूचनाएं**

शिमला-171002, 7 अक्टूबर, 2009

संख्या सिंचाई 11-52/2008-बिलासपुर.—यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार को सरकारी व्यय पर सार्वजनिक प्रयोजन के लिए नामतः गांव रन्डोह में उठाऊ पेयजल योजना पन्नाला सप्लाई टैंक के निर्माण हेतु भूमि ली जानी अपेक्षित है, अतएव एतद्वारा यह घोषित किया जाता है कि निम्नलिखित विस्तृत विवरणी में वर्णित भूमि उपर्युक्त प्रयोजन के लिए अपेक्षित है ।

2. भूमि अर्जन अधिनियम, 1894 की धारा 6 के उपबन्धों के अधीन सभी सम्बन्धित व्यक्तियों की सूचना के लिए घोषणा की जाती है तथा उक्त अधिनियम की धारा 7 के उपबन्धों के अधीन समाहर्ता, भू-अर्जन हिमाचल प्रदेश लोक निर्माण विभाग मण्डी, जिला मण्डी, को उक्त भूमि के अर्जन के लिए आदेश लेने का एतद्वारा निदेश दिया जाता है ।

3. भूमि का रेखांक, समाहर्ता, भू-अर्जन लोक निर्माण विभाग मण्डी, हिमाचल प्रदेश के कार्यालय में निरीक्षण किया जा सकता है ।

विस्तृत विवरणी

जिला	तहसील	गांव	खसरा नम्बर	क्षेत्र (बीघा-बिस्वा में)
बिलासपुर	घुमारवीं	रन्डोह	157/73/1	0-8

शिमला-171002, 7 अक्टूबर, 2009

संख्या सिंचाई 11-54/2008-बिलासपुर.—यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार को सरकारी व्यय पर सार्वजनिक प्रयोजन के लिए नामतः गांव सुन्गल में पेयजल योजना नया बिलासपुर (शहर) में स्टोरेज टैंक के निर्माण हेतु भूमि ली जानी अपेक्षित है, अतएव एतद्वारा यह घोषित किया जाता है कि निम्नलिखित विस्तृत विवरणी में वर्णित भूमि उपर्युक्त प्रयोजन के लिए अपेक्षित है ।

2. भूमि अर्जन अधिनियम, 1894 की धारा 6 के उपबन्धों के अधीन सभी सम्बन्धित व्यक्तियों की सूचना के लिए घोषणा की जाती है तथा उक्त अधिनियम की धारा 7 के उपबन्धों के अधीन समाहर्ता, भू-अर्जन हिमाचल प्रदेश लोक निर्माण विभाग मण्डी, जिला मण्डी, को उक्त भूमि के अर्जन के लिए आदेश लेने का एतद्वारा निदेश दिया जाता है ।

3. भूमि का रेखांक, समाहर्ता, भू-अर्जन लोक निर्माण विभाग मण्डी, हिमाचल प्रदेश के कार्यालय में निरीक्षण किया जा सकता है ।

विस्तृत विवरणी

जिला	तहसील	गांव	खसरा नम्बर	क्षेत्र (बीघा-बिस्वा में)
बिलासपुर	सदर	सुन्गल	176	1-13

शिमला-171002, 3 अक्टूबर, 2009

संख्या सिंचाई 11-42/2009 कांगड़ा.—यतः राज्यपाल हिमाचल प्रदेश को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार को अपने व्यय पर सार्वजनिक प्रयोजन के लिए नामतः महाल घगवां, तहसील इन्दौरा,

जिला कांगड़ा में शाहनहर परियोजना का किनारा के निर्माण हेतु भूमि अर्जित करनी अपेक्षित है, अतएव एतद्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि निम्न विवरणी में निर्दिष्ट किया गया है उपरोक्त प्रयोजन के लिए भूमि का अर्जन अपेक्षित है ।

2. यह अधिसूचना ऐसे सभी व्यक्तियों को जो इस से सम्बन्धित हैं, या हो सकते हैं, की जानकारी के लिए भूमि-अर्जन अधिनियम, 1894 की धारा-4 के उपबन्धों के अन्तर्गत जारी की जाती है ।

3. पूर्वोक्त धारा द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राज्यपाल, हिमाचल प्रदेश इस समय इस उपक्रम में कार्यरत सभी अधिकारियों उनके कर्मचारियों और श्रमिकों को इलाके की किसी भी भूमि में प्रवेश करने तथा सर्वेक्षण करने और उस धारा द्वारा अपेक्षित अथवा अनुमत: सभी अन्य कार्यों को करने के लिए सहर्ष प्राधिकार देते हैं ।

4. अत्याधिक आवश्यकता को दृष्टि में रखते हुये राज्यापाल उक्त अधिनियम की धारा-17 की उपधारा-4 के अधीन यह भी निर्देश देते हैं कि उक्त अधिनियम की धारा-5 ए के उपबन्ध इस मामले में लागू नहीं होंगे ।

विस्तृत विवरणी

जिला	तहसील	गांव	खसरा नम्बर	क्षेत्र (हैक्टेयर में)
कांगड़ा	इन्दौरा	घगवां	87/2	0-04-96
			88/2	0-01-60
			90/2	0-02-80
			91/2	0-03-64
			93/2	0-01-88
			94/2	0-00-68
			99/2	0-01-12
			100/2	0-02-88
			101/1	0-00-18
			102/2	0-04-04
			326/1	0-01-05
			328/2	0-01-82
			329/2	0-04-14
			340/1	0-00-06
			341/1	0-00-12
			348/1	0-00-79
			349/1	0-00-03
			360/2	0-04-85
			367/1	0-00-10
			402/1	0-00-38
			403/1	0-00-58
			404/2	0-00-68
			405/2	0-01-42
			739/2	0-03-56
			739/4	0-00-45
			757/2	0-07-03
			Kitas-26	0-50-84

आदेश द्वारा,
हस्ताक्षरित /—
प्रधान सचिव ।

H.P STATE JUDICIAL ACADEMY
Curzon House, Boileauganj, Shimla-171005

NOTIFICATION

Dated: 23th October, 2009

No. HPSJA/Estt./2009/ 13118.—Four days Earned Leave from 19-10-2009 to 22-10-2009 with prefix 16-10-2009 to 18-10-2009 being Diwali Holidays and Sunday, ex-post-facto, is hereby granted in favour of Sh. Manoj Kumar Bansal, Deputy Director of this Academy.

Certified that Sh. Manoj Kumar Bansal has joined the same post at the same station from where he proceeded on leave, after expiry of the above period of leave.

Also certified that Sh. Manoj Kumar Bansal, would have continued to hold the post of Deputy Director, H.P. State Judicial Academy, but for his proceeding on leave for the above period.

Sd/-

Director

H.P. State Judicial Academy Shimla.